MONTANA LEGISLATIVE HISTORY

Chapter 329 19 74

Bill H 798 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 29	✓ C	Hearing Date(s)	Mar 04	✓ C
	Feb 15	✓ C			C
		C	BEST COPY AVAILABLE		C
		C			C
Date Out	Feb 15	✓ C		Mar 04	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

JUDICIARY COMMITTEE

January 22, 1974

The tenth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Tuesday, January 22, 1974 at 9:10 AM. All members were present except Representatives Baucus, Lucas, Roberts and Warfield, absent, excused.

Bills scheduled for hearing this date were House Bills Nos. 797, 798 and 784.

Chairman Hall opened the meeting stating the committee had three bills before it for hearing today. Representative Quilici has asked that hearing on House Bill 784 be delayed. Those present who wish to testify will be allowed to do so and then will hold further hearing on this at a later date.

HOUSE BILL 772 Chairman Hall stated that at the request of committee he had asked Mr. Kenneth Wynn and Mr. Tom Mulholland of the Liquor Control Division of the Department of Revenue to answer questions.

Chairman Hall stated that a gentleman present wished to record minutes of the meeting and what was the committee wish on this. Representative Bell stated the secretary's minutes are the official recording of the proceeding. Representative Marbut agreed. Concensus was to go ahead and let them record the meeting.

Representative Marbut questioned if in repealing Section 4-133 are they also repealing club licenses and then how would a club get license and would they be transferrable. Mr. Wynn answered this bill repeals section no longer used, only section 4-133 could be repealed.

Chairman Hall then read Sections 4-403 and 4-333. Section 4-403 came into existence under quota laws of 1947 and superceded 4-333. Other licenses were redesignated or reclassified as regular licenses. This older section no longer applied as it was superceded.

Representative Marbut stated that only rationale for passing the bill is that it was outdated.

HOUSE BILL 784 Chief sponsor Representative Quilici requested that hearing on this bill be postponed so hearing will be postponed as no witnesses are present.

HOUSE BILL 797 Representative John C. Hall, is chief sponsor
HOUSE BILL 798 of these bills pertaining to the youth acts. He stated he would turn the hearing over to Judge Haswell. The proponents and opponents were each allowed twenty minutes time.

Proponent Judge Frank Haswell stated he supports these two bills. Arrived at draft of bills so have some understanding of working of Council which was created by Governor Forrest Anderson. Upon commission of the Council they immediately examined the laws. Started out on task by calling on consultants Harry Lawson of Colorado and David R. Smith of New Mexico who indicated there were certain deficiencies in juvenile provisions in the code. Judge Haswell read these from a booklet entitled "Report on Consultation to the State of Montana Governor's Juvenile Justice Committee", of which the original copy is attached with original set of these minutes.

The Council then met for a period of six months, came up with a redraft of juvenile code, held public meetings around the state on this, received two to three hundred comments, suggestions and criticisms from people who read the proposal or attended the hearings. Also requested the Governor's Crime Control Commission to secure information from specialists in the field. Then revised final draft again. These bills represent best judgement of juvenile court and personnel.

Judge Haswell stated he thinks the bills have sufficient specificity to conform to Supreme Court law. Feels that while this may not be the last answer and may be subject to amendment it is an improvement for the State of Montana.

Judge Robert S. Keller, Kalispell, volunteered to attend the meetings as an interested person. He stated this is a good act. Gave background on Judge Haswell and himself. Feels this act is consistent with what is being done in other forty-nine states. Stated one of the major features of this new act is that the offender has counsel. When they have counsel there are a number of alternatives for disposition. Stated there has been criticism that every one of this council is from within the system. The group was a broad group from all over the U.S. and it was open to everybody who was interested. Feels if act does nothing else it does give counsel and also the way it is written it can be amended.

Proponent Harold Hanser from Billings stated many provisions found in the juvenile justice bill have been used for two years in Yellowstone County. This bill gives team approach to handling child abuse problems. This bill is acceptable to those who have to work with it. Has a high degree of flexibility and spells out roles each person plays in child abuse. Feels it is vital Montana get a legal system that will handle juvenile abuse cases adequately. The bill also eliminated some laws that haven't been used for thirty years.

Proponent Helen Camphey, a citizen representative volunteer counselor for three years for the crisis center talked more about

philosophy of the act. Stated in their work on this tried to specify informal procedures, to not be punitive but rather rehabilitative, provided provisions for group homes.

Chairman Hall stated presentation of proponents concluded though they had seven minutes left.

Margaret Stewart, representing SRS, stated the local office of SRS is the County Welfare office. Presented copy of bill with proposed changes to the bill by SRS.

James Piper, director of 4-C's, stated he concurs with these bills and the amendments as proposed.

Tom Honzel, training co-ordinator for County Attorneys Association, was denied time to ask questions of proponents.

Hearing turned over to opponents of bill.

Lyle Monroe, a social worker in Bozeman, who also was a Con-Con delegate, stated he is opposed to this bill. Left prepared written testimony. Wants this bill killed and appointment to come up with a better bill.

Vernon Huffman, juvenile officer from Billings, stated he feels the commission was slanted, no doctor, youth and others on this council.

Opal Weinbrenner, representing self and is a senior at University of Montana, opposed bill. Left prepared testimony. (See exhibit).

Opponent Raymond P. Linder, representing Youth Development Bureau, read from prepared statement (see exhibit). Mr. Hall stopped the reading and pointed out committee members can read.

Charles F. McCarthy, Youth Development Bureau, stated he was not opposed to bill but urged some changes be made. Hopes the revision will be an ongoing thing.

Tom Honzel stated there were some things to be considered. The county attorneys are concerned with House Bill 798. Under definition of probation county attorneys will have to file more petitions. Section 18, which deals with rights of individual is tied to basic legal rights of Miranda warning. Feels these rights should be enumerated in the act. Under waiver in this Section 18 if youth over age of twelve this may make an effective waiver. Under Section 21 regarding dispositional hearings the County Attorneys Association feels this should be mandatory, not a case of "may" to examine parents. Under Section 34, take probation officer out of area of law enforcement.

Chairman Hall stated he would have to stop the testimony so committee members will have time for questions.

Testimony was closed.

Representative Bell requested Tom Honzel to write up his proposed amendments and bring them in.

Representative McKittrick quiered of Mr. Monroe his objections to this bill. Mr. Monroe stated the problem was that the act didn't go far enough.

Representative McKittrick questioned the right of search warrant, how do you justify the probable cause and civil proceeding. Mr. Hanser replied that feeling is that you are allowing giving of quite a bit of authority. Is not a search warrant. Burden of proof is on an affidavit.

Representative McKittrick questioned how you could subject a parent to a medical exam when this is not a criminal act.

Representative Yardley pointed out definition on page 2 of House Bill 797, where talking about abuse. "Excessive" and "failure to thrive" are illusive terms. Was answered that national standards indicate it sets up a rebuttable situation when child comes in with fractured skull, broken bones and pediatrician has a chart which shows averages which indicate when a child isn't thriving. Amounts to medical abuse.

Chairman Hall interrupted to comment that are now seeing one of real problems of committee system in legislature. Time has run out and committee members must leave.

HOUSE BILL 1049 Chairman Hall introduced this notice provision bill. He requested permission to ask action be deferred until action taken on Uniform Probate Code.

Representative Marbut moved action be deferred until action is taken on the Uniform Probate Code. Motion carried.

HOUSE JOINT RESOLUTION 72 Status of bill to which this resolution pertains is that motion to reconsider has been defeated in the House, the motion has been passed and cannot be called back.

Representative Marbut moved that action on this bill be indefinitely postponed, pending outcome of bills in the Senate now relating to the same issue. Motion carried with Representative Greely voting no.

Time ran out and the meeting adjourned at 10:40 AM.

/s/ JOHN C. HALL
by: Dan Yardley Vice Chairman
JOHN C. HALL, CHAIRMAN

JCH:pb

Testifiers

Shirley M. Miller
Bureau Chief
Youth Development

Charles F. McCarthy
Asst. Bureau Chief
Youth Development

Raymond P. Linder
Planning & Research
Youth Development

HB 798

"MONTANA YOUTH ACT" introduced in the 43rd Legislative Assembly by: John C. Hall, and Pat McKittrick.

Introduction

These remarks, offered to this subcommittee, attempt to respond to the proposed Montana Youth Act in the framework of Article II, Section 15 (Rights of persons not adults) and Article II, Section 4 (Individual dignity) of the 1972 Montana State Constitution.

Article II, Section 15

> "The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

Article II, Section 4

> "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

In an attempt to bring some order to these comments, we have tied them as much as possible to the pages and lines and sections of the bill.

page 2, line 6

Section 10-1202: Definition of Purpose. To take a somewhat broader perspective than presented, some thought is necessary concerning the purpose of the Youth Court.

"...The state's authority to legislate in the area of the protection, care, custody, and maintenance of juveniles was a manifestation of the doctrine of parens patriae.

> **"The right of the state, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right 'not to liberty but to custody.' ...If his parents default in effectively performing their custodial functions--that is, if the child is 'delinquent'--the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the 'custody' to which the child is entitled. (In re Gault, 387 U.S. 1, 17 (1967).**

"The role of the juvenile court was not to determine the guilt or innocence of the child, as in an adversary system, but rather to reform and treat the delinquent through a rehabilitative system." (Rose, "Juvenile Statutes and Noncriminal Delinquents: Applying the Void-for-Vagueness Doctrine, 4 Seton Hall Law Review, 184.

Sect. 10-1202 continued

It strikes us, especially in light of the positive phrasing of Article II, Section 15 of the Constitution, that a very high standard for parens patriae exists.

page 3, line 12

Section 10-1203: Definitions. Probation is a term used numero times in the "Act" yet it does not seemed to be defined here or in other sections.

page 5, lines 3-16

Section 10-1203: Definitions. Passing over the tempting argument that the state cannot legislate against the condition youth (Article II, Section 4), we concentrate on the void-for-vagueness doctrine.

> "The fact that a child is under a moral obligation to obey his parents does not preclude the legislature, in the exercise of its police power, from making that same obligation a legal one, with criminal penalties for its breach." (Court comment in Commonwealth v. Brasher, 270 N.E.2d 389 Mass., 1971)
>
> "Due process requires statutory definiteness so that a person of ordinary intelligence does not have to guess as to its meaning."
> (Connally v. General Const. C., 269 U.S. 385, 391 (1926)
>
> "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."
> (Noah Weinstein, Legal Rights of Children. National Council of Juvenile Court Judges)

page 5, lines 9-11

> "Void-for-vagueness doctrine has primarily been limited to criminal statutes; however some courts have recognized the doctrine's applicability to 'civil' statutes.
>
> Small v. American Sugar, 267 U.S. 233 (1952):
>
> Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971):
>
> "A three-judge Federal Court considered the statutory phrases 'morally depraved' and 'in danger of becoming morally depraved' (l.c. 374). A 19-year-old girl was adjudged a 'wayward minor' and placed in a foster home where she violated probation by running away, and then transferred to an adult penal institution. The Court held that the Wayward Minor Statute punished a status or condition rather than a specific act and thus fell within the scope of Robinson v. California, 370 U.S. 662(1962), which held that 'status' of narcotic addiction could not be constitutionally punished as a criminal offense. The Wayward Minor Statute was also considered to be unconstitutionally vague and also void for the further reasons that it contained no requirement for special treatment substantially different from that afforded criminals. Affirmed by U.S. Supreme Court, 406 U.S. 913(1972)."
> (Weinstein, Legal Rights of Children)

page 6, line 12

Section 10-1206: Jurisdiction of court.

> "The conduct-illegal-only-for-children category of the court's jurisdiction should be substantially circumscribed so that it ceases to include such acts as smoking, swearing, and disobedience to parents and comprehends only acts that entail a real risk of long-range harm to the child, such as experimenting with drugs, repeatedly becoming pregnant out of wedlock, and being habitually truant from school. Serious consideration, at the least, should be given to complete elimination of the court's power over children for non-criminal conduct." (Challange of Crime in a Free Society)

page 9, lines 17,18

Section 10-1209: subsection 4. Intake Procedure. Shouldn't it be the arresting officer who is responsible for the advising of rights, particularly in a criminal investigation?

page 10, lines 1,2

Section 10-1209: Subsection 4d. Intake Procedure. Lawyers are prohibited from representing both clients to a legal proceding yet here we have explicit law which allows a probation officer to do just that. NO MAN CAN SERVE TWO MASTERS. Either the probation officer works for the court or he works for the youth. It is not possible to do both

page 8, line 23

Section 10-1209: Intake procedure.

"The statutes generally applicable to juvenile matters provide that taking a juvenile into custody shall not be deemed an arrest.

A. Arrest for an act which would be criminal if committed by an adult.

> In this type of delinquency it should be argued that the juvenile has the same rights as an adult where there is a possibility that the juvenile can be transferred to the adult criminal court for trial or placed in a 'state institution'. Some courts have held that probable cause is required.
>
> Most juvenile courts require that the juvenile be taken to a specific facility and his parents notified.
>
> State v. Arbiter, 408 S.W.2d. 26(Mo.,1966), Cooley v. Stone, 414 F.2d 1213 (D.C. Circuit. 1969), Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis., 1969) (Weinstein, Legal Rights of Children: p.22)

B. Arrest for an act which would not be criminal if committed by an adult.

> Although the position could be taken that a juvenile has the same constitutional rights as an adult, the Supreme Court, in dealing with children, has not accorded them all the constitutional rights of an adult. ...In fact the Supreme Court has been careful to distinguish between acts of children which are crimianl if committed by an adult and those which are not.
>
> It is submitted that a proper test would be a consideration of what the juvenile court proposes to do for or to the child. Gault and the other Supreme Court cases are critical of the Court because it has not lived up to its high promise envisioned by its founders--that the child in fact receives the worst of two worlds. Thus if

the juvenile court metes out punishment rather than treatment, it should be analogized for the purposes of constitutional protection, to criminal courts." (Weinstein, Legal Rights of Children: p. 23)

Section 10-1215: Petition. Subsection 7. "Shall be furnished to the youth upon request", if referring to the whole of Section 10-1215, would seem to violate and vitiate Gault. The qualifing clause--upon request--seems even more strange in light of the requirement in Section 10-1216: Subsection 2 (page 17, lines 24,25 and page 18, line 1): "The summons shall advise the parties of their right to counsel under the Montana Youth Act and shall have attached to it a copy of the petition."

Section 10-1218: Basic Legal Rights. In Article II, Section 24 of the Montana Constitution (Rights of the Accused) rights are guaranteed in all criminal prosecutions. Since a delinquent is a youth who has committed an offense that would be a crime if it was commited by an adult, it is a criminal proceding and therefore is subject to this section of the constitution. Further, the argument reproduced from Weinstein at the top of this page may apply the constitutional guarantee to offenses which would not be a crime if committed by an adult.

Section 10-1220: Adjudicatory hearing.

"Burdens of Proof in Adjudicatory Phase:

A. For Acts which would be criminal if committed by an adult--beyond a reasonalble doubt.

Winship, 397 U.S. 358(1970), State v. V.D.B., 270 So.2d. 6 (Fla.,1972).

Winship held retroactive for criminal status acts of delinquency.

Ivan v. N.Y. City, 407 U.S. 203 (1972).

B. For acts which are delinquent but not criminal if committed by an adult.

Warner v. State, 258 N.E. 2d. 860(Ind.,1970), applies reasonable doubt standard to criminal status offenses but expressely holds this standard is not applicable to other grounds of delinquency." (Weinstein, Legal Rights of Children; page 29,30)

Section 10-1221: Disposition Hearing.

"Juvenile's counsel must be given an opportunity to recommend a disposition. New Jersey v. A.H., 279 A.2d 133(N.J.Sup. 1971).

The right of a juvenile to present evidence relating to disposition is founded on the right of due process. Mikkelson, 226 Cal. App. 2d 467, 38 Cal Rptr. 106(1964).

page 27, line 5

Section 10-1222: Dispositon of Youth.

Rationale for rejecting traditional procedure of juvenile treatment.

> "The California Youth Authority for the last 5 years has been conducting a controlled experiment to determine the effectiveness of another kind of alternative treatment program for juveniles. There, after initial screening, convicted juvenile delinquents are assigned on a random basis to either an experimental group or a control group. Those in the experimentla group are returned to the community and receive intensive individual counseling, group counseling, group therapy, and family counseling. Those in the control group are assigned to California's regualr institutional treatment program. The findings so far: 28 percent of the experimental group have had their paroles revoked, compared with 52 percent in the control group. Further more, the community treatment program is less expensive than institutional treatment."
> (Challange of Crime in A Free Society. 1967).

> "What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as much as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, of psychiatrist. ...Official action may actually help to fix and perpetuate delinquency in the child through a process in which the individual begins to think of himself as delinquent and organizes his behavior accordingly."
> (Challenge of Crime in A Free Society.)

PARENS PATRIAE AS THE QUID PRO QUO IN LIEU OF EQUAL RIGHTS:

> Cardozo, J., in Findlay v. Findlay, 148 N.E. 624, 626 (N.Y.).
>
> "A juvenile who twice ran away from a training school was, by Court Order, transferred to the state penitentiary for the durattion of his minority. The Supreme Court of Vermont reversed, stating that the validity of the juvenile system depends upon its adherence to its protective rather than its penal aspects. If the state dispensed with traditional constitutional safeguards available in criminal proceedings, it must provide effective therapy and 'the rehabilitative caretaking offered in exchange for constitutional protections must be substantive and real, not mere verbiage.' In re Rich, 216 A. 2d 266 (Vt.,1966)."
> (Weinstein, Legal Rights of Children. page 2)

page 34, line 9

Section 10-1227: Private Agency.

> "To give the juvenile the care as nearly as possible equivalent to that which should have been given by his parents established not only an important policy objective, but, in an appropriate case, a legal right to a custody that is not inconsistent with the parens patriae premise of the law." (Weinstein, Legal Rights of Children: p. 32)

page 35,
lines 14-17

Section 10-1228: Probation Revocation. In re Winship quantum of proof for conviction for an alleged violation of criminal laws was raised from a preponderance of the evidence to proof beyond a reasonable doubt. Lines 14-17 of the Youth Act only require preponderance for revocation. It is possible the In re Winship applies to this section because a youth who has his probation revoked is by definiton (Section 10-1203; Subsection 12b) delinquent, and to be delinquent in Montana is to be adjudged criminal and the standard of evidence in a criminal case is beyond a reasonable doubt.

FURTHER...

"Arrest for an act which would be criminal if committed by an adult.

In this type of delinquency it should be argued that the juvenile has the same rights as an adult where there is a possibility that the juvenile can be transferred to the adult criminal court for trial or placed in a 'state institution.' Some courts have held that probable cause is required.

Most juvenile courts require that the juvenile be taken to a specific facility and his parents notified.

State v. Arbiter, 408 S.W.2d.26(Mo.,1966), Cooley v Stone, 414 F.2d 1213 (D.C. Cir. 1969), Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis.,1969)."
(Weinstein, Legal Rights of Children: p. 22).

REVOCATION OF PROBATION--

"Consider the possible effect of Gagnon v. Scarpelli, 36L.Ed. 2d 656 (May,1973): In criminal procedings defendant held entitled to preliminary and final hearing before an 'independent' decision-maker (as a parole board) prior to revocation of probation; indigent probationer's right to appointed counsel at revocation heraring held determinable on a case by case basis in exercise of sound discretion of the state authority responsible for administering the probation system. In this case probation was revoked by the Wisconsin Department of Public Welfare without a hearing. The Court found no distinction in this respect between parole and probation. If counsel is refused at either the preliminary or final hearing, the grounds fro refusal should be stated succinctly in the record. SEE 'Criminal Sentences: Law Without Order,' Marvin E. Frankel, Hill and Wang, N.Y. 1972."

(Weinstein, Legal Rights of Children: p. 31.

page 41, line 13

Section 10-1232: Disposition of Records. This section orders that records of a juvenile be sealed at age 18. In Section 10-1222: Subsection 5 (page 29, lines 5-10) the Court is ordered to transmit appropriate records relating to the Youth to the Institution or Agency which will have custody of the Youth. Under this Section (10-1232) does the Court have responsibility to either retrieve those transmitted records or to order them sealed in place.

page 43, line 12

Section 10-1234: Probation Officers.

Inherent Power of The Juvenile Court--

> **"The inherent power of the juvenile court to select and appoint employees reasonably necessary to carry out its functions of care, discipline, detention and protection of children who come within its jurisdiction, and to fix their compensation.**
>
> **State ex rel, Weinstein v. St. Louis County, 451 S.W.2d 99(Mo.,1970).**
>
> **Carrigan, "Inherent Powers and Finance," Trial, Nov./Dec. 1971. (Weinstein, Legal Rights of Children: page 32)."**

This section is doubly interesting because it talks about the salary of a probation officer. In this session of the legislature the Senate is hearing two bills related to salary (SB 682, SB 683). How do those bills relate to the salary section of this bill and how do all the salaray sections relate to the inherent power of the juvenile court?

page 49, line 24

Section 10-1241: Publicity. Under definition of Purpose, we covered the logic for the existence of a youth court--parens patriae. Parens patriae is supposed to protect children and youth, not place them at the cetner of attention. Publicity is something that is in fundamental opposition to the logic of the Youth Court.
In a different vein, is a trial on dependency-neglect a felony trial? If it is (the Youth Court has jurisdiction), then the press enjoys the protection of this section. We do not feel that publicity would ever help in a felony trial on dependency neglect.

Remember, the Court is interested in rehabilitation--not punishment.

page 51, lines 9-19

Section 10-1243: Definitions. If a youth commits and act that is delinquent or one that is not (status offense), the judge may find that he really didn't do it, and therefore, adjudge him merely a youth tending toward delinquency. How can a youth be tending toward delinquency?...he is by definition a delinquent if he does the act.

Testifiers

Charles F. McCarthy
Asst. Bureau Chief
Youth Development Bureau

Raymond P. Linder
Planning and Research Analyst
Youth Development Bureau

HB 798

"MONTANA YOUTH ACT" introduced in the 43rd Legislative Assembly by: John C. Hall, and Pat McKittrick.

Introduction

These remarks, offered to this committee, attempt to respond to the proposed Montana Youth Act in the framework of Article II, Section 15 (Rights of persons not adults) of the 1972 Montana Constitution.

Article II, Section 15

> "The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

SJR 0004

The 43rd Legislative Assembly recognized that implementing the 1972 Constitution with regard to persons not adults posed some problems when they passed Senate Joint Resolution Four. Due to more urgent legislative matters, the Legislative Council has been unable to carry out its function of conducting a detailed study leading to draft legislation implementing Article II, Section 15.

In lieu of such a comprehensive report, the following observations are made:

page 2, lines 9-12

Section 10-1202; Sub. (1). This purpose is overstated and not fulfilled in this Act. The Act does not cover all Montana Youth--it covers those youth in contact with the juvenile justice system.

page 3, lines 1-3

Section 10-1202; Sub. (6). These testifiers were unable to find sections in this Act that fulfill this purpose.

page 3, lines 7-9

Section 10-1202; Sub. (8). Legal rights within the justice system are carefully spelled out, but citizen rights relating to Article II, Section 15 of the 1972 Montana Constitution are not spelled out and clarified.

page 4, lines 22-25 page 5, lines 1-16

Section 10-1203; Subs.(12),(13). One category of delinquent youth is, any youth in need of supervision who violates any condition of his probation. A youth in need of supervision who is habitually truant and placed on probation, who violates a condition of his/her probation, is by definition a DELINQUENT, and, at least theoretically, can be sent to a juvenile detention facility (jail). It is hard to discover how this possibility conforms to the notion of "a right precluded by law which enhances the protection of such persons." (Article II, Section 15).

page 41, lines 13-18

Section 10-1232. This section relates to the physical sealing of records of youth who have come to the attention of the court. Presumably, the logic behind such a procedure is to seal off access to a person's immature past so that it can not be held against him/her. However, Sec. 10-1232 does not empower the judge to physically seal back issues of newspaper accounts of such records and so the spirit of this section is fundamentally violated in Section 10-1241.

page 49, lines 24,25 page 50, lines 1-5

Section 10-1241. It is hard to find a statement in the Purposes of this Act (Section 10-1202) from which this requirment flows. The section would probably fail the test of the notion of rights "precluded by laws which enhance the protection ...(of youth)." (Article II, Section 15)

page 51, lines 9-19

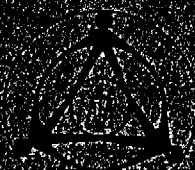
Section 10-1243; Sub. (c). The definition of a youth tending toward delinquency is at best confusing and at worst covers the entire youth population of Montana.

Summary

As a description of and revision of laws dealing with youths in the Montana Justice System, this piece of legislation deserves to be judged on its merits. We suggest that the designation of this legislation as the "Montana Youth Act" is a misnomer and may hinder efforts in the forseeable future directed to fulfilling Article II, Section 15 of the Montana Constitution.

Thank you for your time and attention. We will be happy to answer any questions you may have.

REPORT ON CONSULTATION TO THE STATE OF MONTANA GOVERNOR'S JUVENILE JUSTICE COMMITTEE



THE AMERICAN UNIVERSITY

IMPLEMENTING THE
1972 CONSTITUTION

SENATE JOINT RESOLUTION NO. 4

INTRODUCED BY Neil J. Lynch and Jim Moore (by request)

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO CONDUCT A STUDY OF THE PROBLEMS INVOLVED IN ARTICLE II, SECTION 15 "RIGHTS OF PERSONS NOT ADULTS" OF THE 1972 MONTANA CONSTITUTION CONCERNING THE RIGHTS OF PERSONS UNDER EIGHTEEN (18) YEARS OF AGE, AND REPORT ITS FINDINGS TO THE SECOND SESSION OF THE FORTY-THIRD LEGISLATIVE ASSEMBLY TOGETHER WITH DRAFT LEGISLATION.

WHEREAS, the legislative assembly has the ultimate duty to implement the 1972 Montana constitution with well-researched and well-considered legislation, and

WHEREAS, research and drafting of legislation providing for certain new fundaments of rights of Montana's youth should be accomplished only after careful and considered reflection prior to its presentation for adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is required to conduct a detailed study leading to draft legislation implementing article II, section 15, of the 1972 Montana constitution.

BE IT FURTHER RESOLVED, that a report and draft legislation should be prepared and submitted to the second session of the forty-third legislative assembly.

JANUARY 22, 1974
Judiciary Committee

TO: Rep. Joe Roberts
Montana Capitol
Helena, Montana 59601

FROM: Lyle Monroe, Social Service Worker
1110 South 6th, Avenue
Bozeman, Montana 59715

RE: HB 798
Montana Youth Act.

Almost three decades ago when I was a small infant in diapers our state was revising its' juvenile codes. Here we are in 1974 making a small attempt at updating our codes once again. This long time lapse points out the lack of importance that our state has given to Juvenile Justice. As usual the youth get shoved aside and are usually dealth with only when there is nothing more important or when something demands attention. In the case of the Juvenile Justice Advisory Council it almost seemed as thought Govenor Forrest Anderson said that because we now have Crime Control monies available we can do a revision job. This concerned me because I believe the people of Montana think enough of their young people to ask their legislature to committ our own financial resources to the important task of making a comprehensive children and youth law revision. One that would make our laws fall in line with recent supreme court decisions and our new Montana Constitution.

Having the Crime Control Commission fund such a project under the justification that this would help "equip and train" law enforcement officers seems to me a rather unhealthy approach to take when initiating a Youth Act that will affect countless Montanas under 18 years old for years to come. In my opinion after looking at the make up of the JJAC and the product of deliberations I am convinced that the deck was more than stacked in favor of those with vested interests in the Justice System and against any persons wanting to advocate for youth's rights and enhancing the protection of our minors. All one has to do is to look at the makeup of this committee to see the evident bias it would carry. The final resoult that I would say shows a distinct advantage for those persons admistering and enforcing the law. If the Ex-Governor and whoever advised him had even done a good job of appointing those proffessionals who dealt with youths (who have a brush with the law) I would respect such imput in proposed legislation more than I do now with HB 798.

WHAT ABOUT THE MAKE UP?

The JJAC was made up of two District Court Judges, two probation officers, one

County attorney, one Supreme Court Justice, one Aftercare administrator, one SRS administrator, one citizen representative, one so called youth representative (he is a deputy probation officer and was included in that category above) and one Police officer. There was no representation for the Law Enforcement Academy at Montana State University or the Law School at University of MOntana or other state institution like Pines Hills, Mountain View, Twin Bridges, etc. No line workers froma aftercare or sheriffs departments were included on the council. Municipal judges and justices of the peace were also glaringly absent from what should have been at least a good cross section undertaking any horrendous job like the oneat hand.

In a letter read to Governor Judge on November 16, 1973 at the Public Forum in Livingston, Montana I pointed out some other professionals people that should have been involved in developing any laws relating to children and Youth. Certainly two most important groups that were not actively participating in the councils deliberations were young people and parent organizations. Regretfully no legislators were voting members of such a council. An inexcusable mistake on the part of the people who appointed the JJAC in August of 1972.

The final draft reflects the mentality of those who propose this and if I were confident it did what it says it proposes to do, or I was confident that the committee kept in mind the declaration of Section 15 of Article II in the 1972 Constitution then I would be able to support this proposed legislation. I am as concerned also with what has been deleted or omitted from such an Act. (like the refusal)

The JJAC did not address itself to the following points affecting the everyday lives of young people.

--- School dress codes
--- Child labor laws
--- Medical treatment for minors
--- Youth attention homes
--- Delinquency prevention
--- Day Care homes and Center regulation statutes.
--- How youth can participate in decisions that effect them and their destiny and quality of life.
--- Roles youth can live that will help them prepare to be effective individual citizens in a democracy

If the proposed Act even came close to being comprehensive as far as dealing with Juvenile Justice in more that a court proceedings or institutional setting then I for one would find it more palatable.

If the Act made some attempt at equipping the judicial manpower and court related personnel in temperment, education, and training in the most recent behavioral science techiques, I could be more confident.

If the concept of regional facilities was dealt with for adequate shelter care, detention, treatment and where necessary incarceration in this so called YOuth Act then many of us would encourage support of HB 798.

If those of us who oject ~~see~~ saw Judges and court personnel get the resources they need in dealing with deliquent, hard to manage, truant, runaway, dependent neglect or abused, retarded, emotionally disturbed, etc., children in such a comprehensive Youth Act then we would recommend passage.

If the Youth Act provided for individualized Justice, adequate parent substitution (for children otherwise in need of supervision) and treatment oriented handling of children and youth, our concern would be minimized.

If we were confident enough research had gone into the development of the Act i.e., comparing to other states like, Washington, North Dakota, Hawaii, Oregon our reservations would not be so adamant.

If some cordination was proposed in this legislation to bring together state agencies to help in the development of children and youth to prevent delinquency and promote rehabilatation where it is needed, there would be much more support.

Yes, Montana is changing and our young people deserve the best since our codes won't be revised for another generation or so I suggest we do a better job than is now being proposed in H.B. 798

I sincerely request this committee to recommend a <u>do not pass</u> vote so that the Governor can expand this council and the legislature can fund adequately such an endeavor and we build on to the start that has been made. Such legislation proposed to the 1975 or 1976 session could truly be a worthy piece of legislation. We should not pass the Act until a broader based group is allowed to participate in the drawing up of a new Youth Act.

I see no urgency to get this mediocre and slated package of atatutes on the books. It would be much wiser to see what the National Commission on Juvenile Justice standards project comes up with lest we would have to turn around in three years from now and revise the codes once again.

In your wisdom, then I ask you to do the 230,000 children and youth in Montana a great favor and kill this HB 798 and take steps to insure that our next attempt does the job of enhancing the protection and development of our great resource.

Even though I am one who wants our codes updated as soon as possible I am willing to wait until a better revision is proposed. Montanans want and deserve a progressive Youth Act, not one that is punitive. Take this opportunity to help our young people respect the law and legal system by killing this bill and selecting a new group including present JJAC members that will committ themselves to a year or two of hard dedicated study. Insuring a product that will put our state on top where we should be with respect to Juvenile Justice.

THANK YOU

NAME OPAL WINEBRENNER BILL NO. HB-798

ADDRESS 38 8th Avenue S.E. DATE 1/22/74

Cut Bank, Montana 59427

WHOM DO YOU REPRESENT? Self, and Senior at University of Montana

SUPPORT?_____ OPPOSE? X AMEND?_____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

January 20, 1974

TO: The House of Representatives Judiciary Committee

FROM: Opal Winebrenner, Cut Bank, Montana
Senior at the University of Montana in Political Science-History

RE: The Proposed "Montana Youth Act"

As an active citizen working for the improvement in many areas affecting children and youth, I write to you about my concern relating to the proposed "Montana Youth Act." I feel that it is very unfortunate that the measure has been introduced to the Legislature at this time. The resulting document, as prepared by the Juvenile Justice Advisory Council, is little more than an up-dating of Montana's present juvenile laws to come in compliance with the decisions of the U.S. Supreme Court. Although the act does contain some very good points, it is far from being the progressive document that could serve the best interests and rehabilitation of the youth of Montana who become involved in the juvenile justice system.

The Juvenile Justice Advisory Council has done an immense amount of hard work and research which the act in its present form does not contain. If there is to be a truly modern and comprehensive "Montana Youth Act" and not merely a recodification with piecemeal changes, it is necessary to allow the Council more time to work on the project. The original Council membership was choosen by Governor Forrest Anderson, and is weighted with individuals who are in some way related to the juvenile justice system. The Council membership does not have representatives of the general citizenry of our State, agencies or groups concerned with human resources and services, or the young people themselves, who will be most affected. At present the Council has one citizen representative, and one person who is to be a representative of youth, but is a Deputy Probation Officer and not the age of those youth who will be affected by the measure. It would have been very benefical to have had some youth on the Council who have been involved in the juvenile justice system as it exists currently.

I think very strongly that the Legislature should support and direct Governor Judge to either:

a. Appoint an entirely new Council, or
b. Expand the membership of the current Council to be more realisticly representative, or
c. Retain part of the membership of the current Council with the appointment of new members.

I am sure that there are various state departments and perhaps the Crime Control Commission that would be interested in funding the continuation of the Council in its work.

I personally feel that in the rush to have something to present to the 1974 Legislature, the Council cut down the original, more comprehensive, draft of the act, so that it would be in a form most likely to be accepted and passed with the least amount of difficulty. Although there is usually a general concensus among legislators that it is better to pass legislation with some good points so as to have something concrete to work from, I feel strongly that is this act is passed in its present

January 20, 1974

Committee Secretary:

I am unable to be present to testify on the proposed "Montana Youth Act" so I have provided enough copies of my testimony to be distributed at the hearing on this bill.

I appreciate your handing these out for me on Tuesday, January 22, 1974.

Thank you.

Opal Winebrenner

NAME GERALDINE G. FENN BILL NO. NB-798

ADDRESS 417 West Hayes St. DATE 1/22/74

Bozeman, Montana 59715

WHOM DO YOU REPRESENT? Self, professional youth worker for over 40 years.

SUPPORT?_____ OPPOSE? X AMEND?_____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

The "Montana Youth Act" is not a comprehensive act and therefore the title is misleading. If an attempt is made later to pass something comprehensive, there will be a tendency on the part of legislators and the public to feel that they've already done it — when actually they haven't.

Because the Juvenile Justice Advisory Council members did not represent a broad scope of persons concerned with or youth itself, the proposed act does not reflect a comprehensive approach to children and youth such as directed by SJR-4, passed by the 1973 session of the Montana Legislative Assembly.

Children and youth could better be served if the Governor would be requested to reconstitute the Committee to include such persons as: legislators, youth, educators, health and medical persons, child development specialists, counselors, ~~and~~ more women than the one on the previous committee, Indian persons and social workers.

I/we request this new committee to come up with an act which is comprehensive. (over)

Also, the Legislative Council should be requested to give priority to SJR-4.

Lyle

State of Montana
Office of The Governor
Helena 59601

FORREST H. ANDERSON
Governor

August 14, 1972

RECEIVED
AUG 15 1972
CRIME CONTROL
COMMISSION

Honorable Frank Haswell
Associate Justice
Montana Supreme Court
Helena, Montana 59601

Dear Justice Haswell:

Throughout my career as a County Attorney, Attorney General, Supreme Court Justice and Governor, I have been increasingly concerned about the need to develop a modern, comprehensive juvenile justice system for Montana.

Until recently, the financial resources for the necessary research and study associated with the project were not available. However, the Governor's Crime Control Commission has sufficient funds to underwite staff and travel costs.

Therefore, I am creating a Governor's Juvenile Justice Committee which will review our existing legislation and offer recommendations to the 1973 Legislature.

By means of this letter, I am asking if you will serve as a member of the Committee.

In my view, the Committee should immediately examine the laws and the justice system as each affects our young people who must be adjudicated delinquent, who have committed serious offenses, or who must be formally processed by our police, courts and corrections systems. The Committee should study existing institutional facilities and the incarceration facilities throughout the state. The matter of the Constitutional rights of juveniles and their proper legal defense should also be examined.

The Governor's Crime Control Commission has a lawyer and a professional planner who will be assigned to the work of the Committee.

I am hopeful that the Committee will have a report ready in October and that any legislation can be in final form in November.

Your work in the efforts of the Committee will be most valuable to the cause of juvenile justice in Montana. I trust you will find it possible to serve.

Sincerely,

Judge Haswell

CONSULTANTS REVIEWING

MONTANA YOUTH ACT

CONSULTANT	FUNDING SOURCE	BACKGROUND
Ted Rubin Director-Institute for Courts Management	H.E.W. Youth Development Bureau	Former Denver juvenile court judge. Involved in the revision of Colorado's Juvenile Codes. Professor of Law, Denver University. Consultant for the Youth Development/ Delinquency Prevention Administration.
W. Don Pointer Executive Director-American Corrections Association	Law Enforcement Assistance Administration (L.E.A.A.)	Former rural state probation officer. Administrator of statewide corrections program.
John Irving Dean-Seton Hall Law School	Law Enforcement Assistance Administration (L.E.A.A.)	Former Executive Director-Illinois Law Enforcement Commission. Executive Director-National Council of Juvenile Court Judges. Dean, Juvenile Court Judges, Summer College University of Colorado.
Paul W. Keve American University Law School	Law Enforcement Assistance Administration (L.E.A.A.)	Former Commissioner of the Minnesota Department of Corrections
William H. Sheridan Ass't to Commissioner for Legislation Youth Development/Delinquency Prevention Administration	H.E.W.	Former Executive in the National Council of Crime and Delinquency.

The Big Sky Country

STATE OF MONTANA
SOCIAL AND REHABILITATION SERVICES
Helena, Montana 59601

THOMAS L. JUDGE
Governor

THEODORE CARKULIS
Director

January 18, 1974

COMMENTS ON HOUSE BILL 798
FOR THE CONSIDERATION OF THE HOUSE JUDICIARY COMMITTEE

Attention of the Committee is directed to Section 36, 10-1236(3), and the committee is requested to consider the following comments from the Bureau of Child Welfare Services, Department of Social and Rehabilitation Services:

1. The section should be amended to read "All foster homes established shall be licensed and financed, etc."

   a. The licensing procedure protects the well-being of the child by ensuring that the home is safe and sanitary, and provides information which assists in matching foster home and child to avoid repeated placements which are emotionally damaging to the child.

   b. Federal funds used for foster care payments can only be paid to licensed facilities, therefore, without the licensing provision, only state and county funds could be used for the payment for foster care.

2. The requirement that such foster homes be financed by the Department of Social and Rehabilitation Services should be carefully considered by the committee.

   a. The foster care budget for the present biennium was based on providing care for an average of 1,000 children per month. This caseload has shown a steady increase, with the average now approaching 900 children per month in the first quarter of the biennium.

   b. If the requirement is for the Social and Rehabilitation Services to provide additional foster care payments, the agency would also need additional funds appropriated to cover the cost.

Respectfully submitted,

Margaret Stuart

Margaret Stuart, Chief
Child Welfare Services Bureau
Department of Social and
Rehabilitation Services

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MONTANA COUNTY ATTORNEY'S ASSOCIATION

1230 Eleventh Avenue, Helena, Montana 59601 / 449-3819

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January 24, 1974

Representative John Hall
Chairman, House Judiciary

Dear Representative Hall:

The following is submitted to your committee for its consideration of House Bill 798, the Proposed Montana Youth Act:

1. Section 34(5), p. 45, line 2, is not compatible with Section 9, p. 28, line 21. Under Section 9, the probation officer must make a preliminary inquiry into the matter. He then must determine what course of action to take. This, in effect, makes the probation officer a law enforcement officer. It is, therefore, recommended that Section 34(5) be deleted.

2. Under Section 9, p. 8, line 21, a sub-section should be added providing that:

> "Notwithstanding the other provisions of this section, whenever there is information from any agency or person based upon reasonable grounds that a youth has committed an offense which, if committed by an adult, would be a felony, the probation officer shall immediately notify the county attorney."

3. Probation, a term used throughout the Act, is not defined anywhere in the Act. This is especially significant in Section 9(5)(a), p. 10, line 10, which provides that the probation officer may make any informal adjustment that does not involve probation or detention. The particular problem is how does informal adjustment differ from probation? In this regard, the County Attorneys Association does not have a proposed definition. However, the Association does feel that a definition is necessary to make the Act meaningful.

4. Section 18(1)(a), p. 20, line 8, provides that the youth must be advised of his constitutional rights enumerated by the Miranda warning. Reference to Miranda should be deleted. Miranda is a court decision and is subject to further court interpretation and modi-

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fication or expansion. The rights could be enumerated; however, it is felt that deleting the words "enumerated by the Miranda warning", p. 20, lines 9 and 10, would be sufficient as the courts have stated and will state what those constitutional rights are.

5. Section 18, p. 20, provides that the youth may waive his constitutional rights under certain situations. The term "parents" is used in defining these situations. Because a youth may not be residing with both parents, this should read, "parents, if the youth is residing with both parents, or the parent having custody of the youth...". This change should be made on p. 20 at lines 14, 17 and 20.

6. Section 18(2)(a), p. 21, line 6, provides that no youth can be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge. Under this provision, a law enforcement officer investigating a serious crime could not fingerprint or photograph a youth without an order of the youth court. In many areas of Montana, however, a youth court judge may not be readily available, and the investigation could be brought to a standstill. Therefore, it is recommended that this subsection be deleted.

7. Section 21, p. 25, line 15, deals with the dispositional hearing. Under this section, the youth may be examined and this is discretionary with the court. However, the court may only order the examination of the parent if the parent gives his consent. In such a situation, the parent should not be able to withhold his consent. Discretion in this matter should lie solely with the court. Thus, it is recommended that "who gives his consent", p. 26, line 4, be deleted.

Thank you for your consideration,

Respectfully submitted,

THOMAS C. HONZEL
County Attorney Training Coordinator

TCH:lsm

cc: The Hon. Frank I. Haswell
Associate Justice
Montana Supreme Court
Helena, Montana 59601

NAME: Lyle Monroe DATE: Jan 22

ADDRESS: 1110 S. 6th Ave Bozeman, Mont.

REPRESENTING WHOM? Myself + youth

APPEARING ON WHICH BILL? H.B. 798

DO YOU: SUPPORT?_____ AMEND?_____ OPPOSE? ✓

COMMENTS: It is not ready yet and need more work!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

November 17, 1973

Honorable Thomas L. Judge

As an active citizen I appreciate this opportunity to let my voice be heard. Such opportunities are becoming more frequent for the average Montanan, and I trust our concerns will be taken seriously and acted upon.

I am concerned about the proposed Montana Youth Act !!

First, with the make up of Juvenil Justice Advisory Committee that prepared the present draft. I am deeply troubled that no professional persons representing the following fields were on the Juvenile justice Advisory Council as voting members.:

Educators (Minority instructors)	Child Development Specialists
Medical persons	Rehabilitators
Social Workers	Counselors
Legislators	

Without free exchanges from different disciplines I question the Law Enforcement slant that this document might carry. Much imput should be built on to the proposed draft from the various professional groups mentioned above, before we can truly call this a comprehensive revision of Montana's Juvenile Statutes.

Secondly, Senate Joint Resolution Four was not acted upon by the legislative Council. For some reason this resolution did not get picked from the priority list of the Council and no person or groups at this time is actively researching the spirit of this request. Possibly such a study could be done but certainly not before the 1974 Legislature.

Thirdly, youth have not had ample opportunities to be involved in this once in a life time revision that will affect their lives. Such things as student congresses, YMCA, conventions, debates would help young persons understand the codes and help prepare them to participate in decision-making way toward this legislation.

For the reasons I have stated, I ask you, the highest elected official of this state, to intercede on the behalf of the 238,000 plus children and youth of the state of Montana. I ask you to urge the Legislative Council to begin immediately following through with the Senate Joint Resolution Four mandate. Also since you did not have an opportunity to appoint persons of your choosing to the Juvenile Justice Advisory Committee it would seem most proper for you to do so in the near future. This could help rectify the apparent lack of diversity among the present proposers of the Montana Youth Act.

Governor Judge; do the young people of our state a great service by doing what you can to postpone the introduction of the YOuth Act 1974 in the 1974 session. Keep in mind the time it took for the criminal codes revision (10 years) and help Montana do a just and worthy job. I feel confident you will move swiftly in enhancing the protection and development of MOntana's greatest treasure - her youth.

Sincerely yours,

Lyle Monroe

Lyle Monroe
1110 South 6th
Bozeman, Montana 59715

phone:
Office-587-1421
Home -587-5345

IMPLEMENTING THE
1972 CONSTITUTION

SENATE JOINT RESOLUTION NO. 4

INTRODUCED BY Neil J. Lynch and Jim Moore (by request)

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO CONDUCT A STUDY OF THE PROBLEMS INVOLVED IN ARTICLE II, SECTION 15 "RIGHTS OF PERSONS NOT ADULTS" OF THE 1972 MONTANA CONSTITUTION CONCERNING THE RIGHTS OF PERSONS UNDER EIGHTEEN (18) YEARS OF AGE, AND REPORT ITS FINDINGS TO THE SECOND SESSION OF THE FORTY-THIRD LEGISLATIVE ASSEMBLY TOGETHER WITH DRAFT LEGISLATION.

WHEREAS, the legislative assembly has the ultimate duty to implement the 1972 Montana constitution with well-researched and well-considered legislation, and

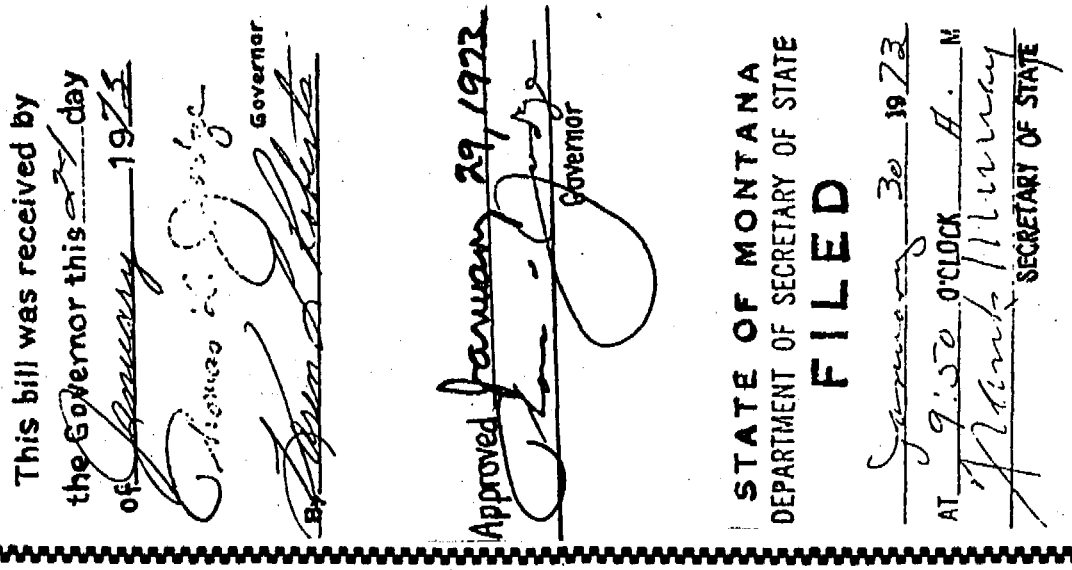
WHEREAS, research and drafting of legislation providing for certain new fundaments of rights of Montana's youth should be accomplished only after careful and considered reflection prior to its presentation for adoption.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is required to conduct a detailed study leading to draft legislation implementing article II, section 15, of the 1972 Montana constitution.

BE IT FURTHER RESOLVED, that a report and draft legislation should be prepared and submitted to the second session of the forty-third legislative assembly.

(over)



This is a copy of SJR4 which was passed by the Senate and the House and signed by Governor Thomas L. Judge on January 29, 1973.

WHAT HAPPENS NOW?

Watch to see who is appointed to the Legislative Council near the 50th day (about February 27) of the current session. By present statute, the Legislative Council consists of 12 legislators - six Senators and six Representatives. In the Senate, the Committee on Committees appoints three Deomocrats and three Republicans. In the House of Representatives, the Speaker (Harold Gerke) appoints three Democrats and three Republicans.

Note: SB344 by Darrow, Lynch and others and SB375 by Groff, James and others, if passed, would reorganize the Legislative Council, it's staff and study committees, so that the above statute might not be in effect.

The new Legislative Council will meet before the end of the session to review all bills requesting study, assign priorities and set up interim study committees. Priority is usually given to those issues which generated the most interest during the Legislature. The Legislative Council and the study committees will probably meet once a month until the next session of the Legislature convenes in January, 1974.

WHAT CAN YOU DO?

Write to your own Senators and Representatives:

1. Express interest in the work to be done related to SJR4.
2. Offer suggestions and recommendations. (We have extra copies of the recommendations developed by MACCY in Lewistown on December 2, 1972.)
3. Tell of the workshops, meetings and programs where you will try to get additional recommendations for laws affecting those under 18 years of age.

Enlist help in writing legislation in regard to the rights of persons under the age of majority and turn this into the Legislative Council and the Juvenile Justice Advisory Council.

for foundation administrators

Foundations fund national commission to develop standards for juvenile justice.

Created by the Institute of Judicial Administration and the American Bar Association, the goal of the new commission is to study and reform the old juvenile justice system. The commission would develop the nation's first set of comprehensive standards and practical guidelines on the handling of youthful offenders by police, judges, legislators, social workers, schools, correctional institutions and other agencies.

The commission is composed of more than 20 judges, professors, public officials, and experts in education, psychology, law and corrections. They were appointed to the panel by Roger M. Blough, president of the judicial institute, and Robert W. Meserve, president of the bar association. A drafting committee of 60 members will be appointed for the Juvenile Justice Standards Project, which is expected to take three years and cost about $1.5 million.

Funding the project and the commission are the Law Enforcement Assistance Administration, the American Bar Endowment, The Vincent Astor Foundation, The Andrew W. Mellon Foundation and the Herman Goldman Foundation.

Judge Irving R. Kaufman, the commission's chairman and a member of the United States Court of Appeals for the Second Circuit, said there are no judicial standards for juveniles "endorsed by those ultimately responsible for law and judicial reform in this country. The Institute of Judicial Administration and the American Bar Association will attempt to fill that void."

The standards and guidelines produced by the commission will be designed for use by numerous state and local agencies dealing with children in trouble across the country.

The Henry Luce Foundation initiates major Asian program for those who aren't Asian specialists.

Known as the Luce Scholars Program, the new multimillion-dollar plan annually will send to the Far East about 15 recent college graduates or professional school students and graduates with high potential for accomplishment in fields unrelated to Asian specialties. The participants, starting in the fall of 1974, will work, study and travel for a year to gain "a concentrated exposure to a specific Asian environment within the context of their professional interests and abilities."

The foundation said it doesn't expect the participants to become Asian experts. Rather, notes Henry Luce III, president of the foundation, the program will "imbue a greater number of Americans with leadership potential with a firsthand familiarity of Asia at a flexible and formative time in their careers."

Among those expected to participate, the foundation said, are "future lawyers, educators, legislators, journalists, bankers, doctors, businessmen, engineers, writers and artists."

Each stipend will be worth $9,000. Additionally, the foundation will provide air transportation to and from the Far East and medical insurance for the scholars, and will pay certain other related expenses. The stipend covers all local expenses in Asia.

The Asia Foundation will manage all aspects of the program for The Luce Foundation. Sixty colleges and universities across the country have been asked to cooperate in the program. Participation will be by institutional nomination only. No individual applications will be accepted.

With the announcement of the Asian Scholars Program, the foundation said that when the new endeavor and the Henry R. Luce professorship program became fully operable, roughly half of the foundation's annual resources--some $700,000 to $800,000--will be channeled through these two foundation-initiated programs.

Michigan foundations plan 1974 meeting; take steps to establish formal, state-wide organization.

The second Conference of Michigan Foundations has been set for Feb. 21 and 22 in Ann Arbor. At that time, plans for a formal, state-wide organization to serve the state's foundations are expected to be unveiled. Delegates polled at the first Michigan foundations's conference last March (see *Foundation News*, May/June 1973) indicated they wished to see some kind of "structured organization" formed. A steering committee to explore formation of the formal body has been at work this year, under the chairmanship of Leonard L. White, vice president of the W. K. Kellogg Foundation.

Fruits of the first meeting were quick to grow, according to a memorandum issued by the steering committee. It noted, "The March conference provided an impetus for representatives of foundations in eight geographic areas of the state to meet in their own communities to discuss the philanthropic opportunities and problems unique to their 'hometowns.' In Grand Rapids . . . local foundations are developing . . . a 'fair share' formula to be used in community-wide appeals."

Representatives of the Michigan group have met with executives of the Council on Foundations "to determine what relationships will most benefit" both organizations.

Human rights group uses foundation grant to launch program to "upgrade" depth reporting in South.

The Southern Regional Council set up the pro-

Council on Foundations
888 7th Ave. N.Y.
New York

JUDICIARY COMMITTEE

February 15, 1974

EXECUTIVE SESSION

The thirtieth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Friday, February 15, 1974 at 9:10 AM. Representative Dan Yardley, Vice-Chairman, presided. All members were present except Representatives Hall and Greely, absent, excused.

Acting Chairman Yardley opened the meeting stating the committee had before it the youth act and the acts that go with it which are House Bills 797, 798 and 985 and the privacy act which is House Bill 1024. Judge Frank Haswell present to answer questions and perhaps advise on the Youth Acts. Representative Yardley stated he would let the subcommittee present their amendments.

Representative Marbut, a member of the subcommittee on House Bill 798 explained that he had made up a copy of House Bill 798 with all the amendments put into it as they were proposed by the subcommittee. The pages were not yet collated so were passed around in order and put together by each committee member, and is hereinafter referred to as Exhibit A. Note: For copy of Exhibit A see one attached to minutes of meeting on adjournment of this date.

Representative Yardley wished to remind the committee that at 10:30 they would lose a quorum, will probably have to meet on adjournment tonight to complete work on these bills.

Ms. Rosemary Zion, an attorney with legislative council worked with the subcommittee on the Youth Acts. She was asked to explain the amendments.

Ms. Zion explained the subcommittee decided not to call it the "Montana Youth Act" since spectrum dealt with more. The subcommittee proposed to amend the title by changing it to "Montana Juvenile Justice Act". Judge Haswell stated he was not happy with this title change since some people react to the word "Juvenile". Suggested naming it the "Montana Youth Court Act".

Ms. Zion called committee's attention to amendment to page 2 of Exhibit A, subsection (2). Judge Haswell stated this part of provision was something he drew himself. There was a misunderstanding over "retribution".

Subcommittee next removed on pages 2 and 3 of Exhibit A the subsections (5) through (8) on the basis are not related to this bill. Judge Haswell explained that subsection (7) related to provision requiring parents able to do so to pay for cost of children. Requests committee to reinstate subsection (7) on page 3.

Ms. Zion then explained that subcommittee added "clear and convincing proof" on page 4 under definition of parent based on Stanley vs. Illinois case. Subcommittee on pages 4 and 5 also changed the definition of "youth", was deleted so that if a youth in need of supervision violated his probation could be treated more strictly. Judge Haswell stated that the council of which he is chairman felt this was necessary. Feels this provision is advisable because have to have some way of dealing with repeated probation violations.

Ms. Zion explained that on page 10 the subcommittee made a change in kinds of dispositions that could be made after hearing or sentencing in relation to actions probation officers may take. On pages 11 and 12 have spelled out dispositions that might be under informal adjustment. Representative Lucas questioned whether there was any benefit in informal consent adjustment without petition. Judge Haswell stated the committee felt this should be used.

On pages 14 and 15 subcommittee, in regard to places of detention modified subsection (c) to include detention homes.

On page 17 subcommittee changed subsection (7) under petition to make the petition served with summons on both the youth and guardians.

On page 18 added a new subsection (5) to specify time to conduct hearing to determine if and where youth should be detained prior to hearing. Representative Towe pointed out that an adult has the right to a bail type hearing but youth didn't have.

On page 20 subcommittee elaborated on standards of Miranda warning. Judge Haswell stated there are other rights youth has other than the fifth and sixth amendments. Representative Marbut suggested amending this section on page 20 to include the language "constitutional rights included but not limited to".

Next problem for subcommittee was a youth's right to waive his rights. Couldn't see how there could be an effective constitutionally valid "waiver of right" for youth so put in "only on waiver of counsel". Judge Haswell stated he doesn't object to this. Subcommittee's interpretation of Miranda warning was that it could not be done so struck subsection (c) on page 20 and put in other provisions. Judge Haswell explained this was because committee felt there should be a procedure where youth could waive his rights without having an attorney.

On page 22 subcommittee made a technical change because this is a disposition which is available only in case of delinquent youth and felt this should be made more formal.

On page 24 lines were deleted because this dealt with publicity in hearing in youth court and subcommittee decided whatever process they came up with in youth court could also be used

in transfer court. If transfer hearing means anything at all it has got to be private.

On page 25 subcommittee changed lines 3, 4 and 5 affecting who could be present at a hearing including the public information media. Judge Haswell stated we're now in a real rats nest. Urges committee not to tinker with this portion which is the Loble Law. Stated it isn't worth all the furor that can be caused in making the press be in there. Many judges in the state do not want it left to their discretion to determine who will be present at hearing.

On page 27 some provisions were added for placement of delinquent youth. Subcommittee wanted to leave this open because you have a psychological problem more than a criminal problem in some cases. Case should be reviewed at six month point. Judge Haswell stated the council felt it might run into difficulty with people who run the institutions, they might feel time spent there depends on the degree of rehabilitation.

On page 27 the consent provision has changed to make it consistent throughout the act. Judge Haswell also stated that on page 27, subsection (2) this forty five day evaluation period was probably unconstitutional.

On page 29, lines 3 and 4 were deleted to give the court power to modify any of its orders. Judge Haswell stated that generally correction people in institutions feel they are better able to assess one in custody than the court. Representative McKittrick stated that the court that makes the initial decision and the judge at the local level has no jurisdiction after commitment. Then the institution does. Representative Yardley stated this creates an ambiguity. The change on page 30 follows the change made on page 29. Judge Haswell stated he feels correctional personnel are in better position to assess than the judge who hasn't seen youth in several months.

On page 31 concerning consent decree with adjudication subcommittee wanted petition filed before consent adjudication the same as with adjudication so will be consistent.

Amendment to page 33, line 2 regarding appeals was made to bring this into conformity with criminal code procedure.

Amendment to page 34, line 18 made so that when youth committed to a public agency from a private agency could require reports be transferred.

Amendment to page 35 concerning standard of proof, "preponderance of the evidence" was taken out and used "proof beyond a reasonable doubt". Judge Haswell stated he doesn't think this is important. To his knowledge there is no U.S. Supreme Court decision requiring "proof beyond a reasonable doubt".

On page 36 in line 3 rather than 4 as shown in Exhibit A subcommittee made a change in transfer hearing because the county attorney should maintain advocacy power and court should not be made to take on advocacy powers.

On page 39 changes are substantial regarding sealing of the records. Subcommittee wanted this portion spelled out.

On page 41 subcommittee took out the phrase "unless otherwise ordered by the judge". Pertains to sealing of the records. Representative Towe stated the subcommittee had a real problem with this. Accepted council draft which allows this. Representative Towe feels once records are sealed shouldn't be able to go into them.

On page 41 sub committee struck subsection (2) so that if youth himself had a legitimate reason to clear up something he could grant permission to open records. Also put in provision that copies of records shall be sealed or destroyed and put in a penalty provision. Judge Haswell stated that as far as the penalty goes there is a fear by many that in the process they might inadvertently release or fail to seal records.

On page 44 the subcommittee added to the requirements for qualifications of probation officers as set forth in Section 34. Representative Lucas stated he had seen some educated fools and questioned the necessity of qualifications. Judge Haswell agreed with statement regarding educated fools.

On page 45, subsection (5) committee struck language as felt it would not be undue hardship to have a probation officer get a peace officer to make the arrest. Representative Lucas disagrees with this theory. Probation officer may have a case where he has to arrest the youth. Thinks are making an impractical application with the amendment. Judge Haswell stated this provision was put in at request of probation officers association. Representative Yardley stated that there was a conflict between the association and the probation officers. Judge Haswell stated his council wanted to strike a happy medium.

Subcommittee made change to Section 36 regarding foster homes on page 47, because SRS can get federal money to pay for care in a licensed home. Representative Lucas stated he objected to this change.

On page 50 a change was made under Section 41 dealing with publicity but the change won't change any effects.

Subcommittee also found that all provisions relating to category of youth could relate to "youth in need of supervision" and thus the several amendments on page 50.

Time ran out and the meeting adjourned at 10:45 AM.

DY:pb

DAN YARDLEY, VICE-CHAIRMAN

JUDICIARY COMMITTEE

February 15, 1974

EXECUTIVE SESSION

The thirty first meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building in Helena, Montana on Friday, February 15, 1974 on adjournment of the House of Representatives for purpose of Executive Session. Representative Dan Yardley, Vice-Chairman, presided. All members were present except Representative Hall, absent, excused.

HOUSE BILL 798 Representative Towe, chief sponsor of this bill for the general revision of the laws relating to juveniles and juvenile courts and providing for other matters relating to treatment and procedures concerning youth, stated there was a question on the title of the bill. Judge Haswell who has done much work with youth was present at request of committee.

Representative Towe stated Judge Haswell had suggested amending title and moved that the words "Montana Youth Act" be stricken and insert in lieu thereof the material "Montana Youth Court Act" on page 1, line 3 and everywhere else it shows up in the bill. Motion carried.

Every committee member was given a set of proposed amendments to this bill. Acting Chairman Yardley stated committee would first make changes to the amendments proposed by the subcommittee and will then take a vote on the amendments as a package. Also, each member has a copy of bill with proposed amendments worked into it (hereinafter referred to as Exhibit A).

Representative Lucas stated that he does not want subsections (5) through (8) on pages 2 and 3 taken out, feels they blend in with general tenor of act. They are spelling out the rights of youth here, why not spell out responsibility. Representative Towe doesn't agree.

Representative Lucas moved to reinsert on pages 2 and 3 of Exhibit A, subsections (5) through (8). Motion failed with Representatives Lucas, Bell, Warfield and Yardley voting aye.

Representative Towe called attention to page 4, line 25 and continuing on page 5, lines 1 and 2 and stated this would be a definition of what constitutes a delinquent youth, subcommittee felt should keep in what is youth in need of supervision.

A motion was made by Representative Lucas to reinstate the lines taken out by proposed amendments in Exhibit A on page 4, line 25 and page 5, lines 1 and 2. Representative Towe stated there are other provisions to take care of this, have allowed for detention in other places and supports subcommittee's position on this. Motion to amend carried with Representatives Marbut and Towe voting no.

Representative Lucas called committee's attention to page 5, line 7, subsection (a) and questioned whether "use" didn't exclude sale, procuring and selling to another. Minors are not considered or covered here. Feels they should be. Ms. Zion explained the difference and Representative Lucas then agreed with this subsection.

Representative Towe moved at request of Representative McKittrick who was not able to be present to amend on page 20 of Exhibit A, line 9, by adding or reinstating the constitutional rights language "his constitutional rights enumerated by the Miranda warning"..

Representative Lucas stated they have these constitutional rights and feels this is superfluous language. A substitute motion was made by Representative Lucas to amend on page 20, line 9, to have the language on line 9 read "advised of his constitutional rights and rights of this act". Following much discussion and changing of exact language the final amendatory language was "advised of his constitutional rights and his rights under this act", delete amended material and stricken material in line 11. Motion to amend carried.

Representative Bell questioned what if this fellow declined his constitutional rights. Representative Lucas reiterated the same question and was advised that "upon right of counsel" was inserted to take care of this. Representative Towe questioned if parents ever make an effective waiver. Pointed out that interests of parents and youth aren't always the same. What about right to counsel if conflicting interests between parents and child. Judge Haswell pointed out that they are trying on page 20, lines 13 through 21, to make practical solution, realizing some of these waivers might be unconstitutional. Much discussion followed regarding waiver of rights. Representative Lucas pointed out that most cases don't have an attorney anyway.

Representative Lucas moved to reinsert the words on page 20 of Exhibit A, line 12 "under the following situations" and put back in the three "i" subsections, and strike in line 12 the material "only upon advise of counsel". Representative Roberts stated he had a minority report of one from the subcommittee and he feels the same way as Representative Lucas. Motion carried with Representatives Towe and Marbut voting no.

Representative Lucas then questioned the hand printed material on page 20 after line 25 as well as lines 22 through 25 which were stricken in bill with amendments worked in. Judge Haswell stated this material provides that any out of state admission or confession cannot be used as evidence. Much discussion followed.

Representative Greely moved to amend on page 20 of Exhibit A, the first line after line 25 by striking the material "or a youth in need of supervision". Motion to amend carried with Representatives Towe, Marbut and Roberts voting no.

Representative Lucas moved to amend on page 25 of Exhibit A, lines 3 and 4 by reinstating the stricken material and striking the new material printed in bill. Motion carried.

Representative Towe questioned the stricken material on page 29, lines 3 and 4. Representative Marbut explained that the Department of Institutions is changing rapidly, is being taken over by SRS, might be better to leave this part as child might be in his home town, Department of Institutions might be a long way away. Representative Lucas moved the stricken material on lines 3 and 4 of page 29 be reinserted in view of the fact responsibility between the two departments is already changing. Representative Greely feels the court should be the one to modify order, and not leave entirely to Department of Institutions. The court has original proceeding. If Department of Institutions wanted to extend his commitment, could apply to court for extension. Representative Lucas withdrew his motion.

Representative Towe explained that the stricken material on page 30 of Exhibit A, lines 12 and 13, was to conform the form for order of commitment and since taken out on page 29 is appropriate to take it out on page 30 as well.

Representative Towe explained amendment to page 33 of Exhibit A, line 2, is talking about a judgement here, the new material gave court power on criminal procedures only.

Representative Towe explained the amendment to page 35 of Exhibit A, line 16, which makes the law the same for juveniles as it is for adults for probation revocation.

Representative Greely moved to amend on page 5 of Exhibit A, line 30, by eliminating "youth in need of supervision" from violation of probation definition because he thinks under current law probation of adults and burden of proof of violating probation "beyond a reasonable doubt" is too stringent. Representative Lucas thinks are denying a necessary tool to enforce violations of parole if eliminate this portion. Also moved to amend on page 35, line 16, by inserting original language and striking new material. Following discussion during which Representative Towe questioned "beyond reasonable doubt" terminology versus "preponderence of evidence" and Representative Greely stated that in Great Falls they don't use "beyond reasonable doubt". Representative Greely withdrew his motion.

Representative Towe moved to amend on page 35 of Exhibit A, line 16, by striking the material already stricken, strike the newly inserted material and add after the word "is" on line 15 the new material "the same standard used in probation revocation of an adult". Motion carried.

Representative Towe moved to amend on page 5 of Exhibit A, line 1, after the word "supervision," by adding the new material "who has been found by evidence beyond a reasonable doubt to have violated

provisions of his probation". Stated the practical difference is whether Miles City facility or Department of Institutions is where the child sent longer than six months. Motion failed with Representatives Marbut, Baucus and Towe voting yes.

Discussion followed regarding amendment to page 39, line 9, pertaining to the sealing of the records. Ms. Zion stated that by tracing back into records can develop type of person or individual are dealing with. Representative Greely stated a court order could be obtained on this. Would prefer to have it more accessible but thinks idea of sealing records is a good one. Representative Towe stated that he is concerned that if this means anything at all have got to put a limit on confidential matters. Feels records ought to be sealed.

Representative Lucas moved to amend on page 41 of Exhibit A, lines 17 and 18, by reinstating stricken language and also reinstate stricken language in lines 19 through 22 on page 41. Following brief discussion motion carried with Representatives Baucus, Towe and Marbut voting no.

Representative Greely moved to amend on pages 39 and 40 of Exhibit A by striking the material "prior to sealing of records". Representative Towe questioned the rationale behind this motion to which Representative Greely replied that he feels the County Attorney didn't want his records sealed so he can't use them. Might be some reason for looking through law enforcement records. Representative Towe replied that if you do this then Section 32 isn't even needed. Representative Greely withdrew his motion.

Representative Greely moved to amend on page 41 of Exhibit A, lines 9 and 10, by reinstating the language "unless otherwise ordered by the judge". Judge Haswell stated his council wanted to make it possilble for judge to release information to branch of services or prospective employer. Motion to amend carried with Representatives Baucus and Towe voting no.

Representative Lucas moved to amend on page 41 of Exhibit A, line 25, by reinstating the word "court" and adding "or the". His idea is that a youth who has become an adult and may be a suspect will not consent to any opening of the files. Motion to amend carried with Representative Towe voting no.

Representative Lucas moved to amend on page 41 of Exhibit A, subsection (3), by deleting the material "to a fine of $200" and inserting in lieu thereof the material "contempt of court". Following brief discussion motion carried.

Representative Lucas moved to amend on page 45 of Exhibit A, lines 4, 5 and 6, by reinserting the stricken material. Motion

carried with Representatives Roberts, Baucus, Marbut and Towe voting no.

Representative Roberts moved the amendments be adopted and as adopted DO PASS AS AMENDED. Motion carried.

Business being concluded the meeting adjourned.

Dan Yardley by pp
DAN YARDLEY, VICE-CHAIRMAN

DY:pb

PROPOSED AMENDMENTS TO HOUSE BILL NO. 798

Be amended on page 2, section 1, line 23 by striking the material "Montana Youth Act" and insertin in lieu thereof the new material "Montana Juvenile Justice Act", and

Be further amended on page 2, section 2, line 6 after the word "The" by striking the material "Montana Youth Act" and inserting in lieu thereof the new material "Montana Juvenile Justice Act", and

Be further amended on page 2, section 2, subsection (1), line 12 after the words "of the" by striking the material "Montana Youth Act", and inserting in lieu there of the new material "Montana Juvenile Justice Act", and

Be further amended on page 2, section 2, subsection (2), lines 13 and 14 after the parenthesis and figures "(2)" all the material "to provide a program of supervision, care and rehabilitation for youth" and inserting in lieu thereof the new material "<u>to remove from youth committing violations of the law the element of retribution and to substitute therefore a program of supervision, care and rehabilitation</u>", and

Be further amended on page 2, section 2, subsection (4), line 22 after the word "rights" by striking the punctuation ";" and inserting in lieu thereof the punctuation ".", and

Be further amended on pages 2, section 2, lines 23 through 25 and on page 3, lines 1 through 9 by striking all of subsections (5) through (8) in their entirety, and

Be further amended on page 3, section 3, lines 12 and 13 after the words "of the" by striking the material "Montana Youth Act" and inserting in lieu thereof the new material "Montana Juvenile Justice Act", and

Be further amended on page 4, section 3, subsection (8), line 7 after the word "determine" by striking the words "when and" and,

Be further amended on page 4, section 3, subsection (8), line 7 after the word "live" by inserting the new material "and for what period", and

Be further amended on page 4, section 3, subsection (9), lines 16 and 17 after the words "father of" by striking the words "a youth whose parenthood has not been judicially established" and inserting in lieu thereof the new material "an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof", and

Be further amended onpage 4, section 3, subsection (11), line 20 after the word "means" by inserting the new material "the court established pursuant to this act to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court", and

Be further amended on page 4, section 3, line 25 and on page 5, section 3, lines 1 and 2 by striking all of subsection (b) in its entirety, and

Be further amended on page 5, section 3, subsection (a), line 8 after the word "regarding" by inserting the material "use of", and

Be further amended on page 5, section 3, subsection (a), line 8 after the word "beverages" by inserting the new material "by minors", and

Be further amended on page 5, section 3, subsection (c), line 13 after the material "school." by adding a new subsection (d) to read as follows: "(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision. ", and

Be further amended on page 5, section 3, lines 14, 15 and 16 by striking all of lines 14, 15 and 16 in their entirety, and

Be further amended on page 5, section 3, subsection (14), line 18 after the material "section 10-1301." by adding new subsections (15), (16), and (17) to read as follows: "(15) 'Custodian' means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody;

(16) 'Necessary parties' include the youth, his parents, guardian, custodian or spouse;

(17) 'Detention facility' means a residential facility for the detention and rehabilitation of delinquent youth such as Pine Hills School in Miles City and Mountain View School in Helena.", and

Be further amended on page 6, section 6, line 14 by striking the material "Montana Youth Act" and inserting in lieu thereof the new material "Montana Juvenile Justice Act", and

Be further amended on page 9, section 9, subsection (a), line 18 after the word "act" by inserting the new material "and the Constitutions of the State of Montana and the United States", and

Be further amended on page 10, section 9, subsection (b), line 15 after the word "or" by striking the word "detention" and inserting in lieu thereof the new material "other disposition authorized", and

Be further amended on page 11, section 10, subsection (2), line 24 after the word "or" by striking the word "detention" and inserting in lieu thereof the new material "other disposition", and

Be further amended on page 12, section 10, subsection (b), line 7 after the word "been" by inserting the new material "or will be in any way", and

Be further amended on page 12, section 10, subsection (3), line 14 after the material "declarant." by adding new subsections (4), (a), (b), (c) and (d) to read as follows: "(4) The following dispositions may be imposed by informal adjustment:

(a) Probation;

(b) Placement of the youth in a licensed foster home or other home approved by the court;

(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;

(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a detention facility as defined by this act and such commitment shall not exceed a period of six (6) months without a subsequent order of the court, after notice and hearing;", and

Be further amended on page 14, section 13, subsection (3), line 14 after the word "shall" by striking the material ", as soon as practicable," and inserting in lieu thereof the new material "immediately", and

Be further amended on page 14, section 13, subsection (3), line 15 after the word "fact" by inserting the new material "and shall, as soon as practicable, provide the probation officer", and

Be further amended on page 14, section 14, subsection (1), line 20 after the word "youth" by inserting the new material "or youth", and

Be further amended on page 15, section 14, subsection (c), line 1 after the word "a" by striking the word "detention home" and inserting in lieu thereof the new material "district youth guidance home or other youth facility", and

Be further amended on page 15, section 14, subsection (c), line 3 after the words and punctuation "court; or" by adding a new subsection (d) to read as follows: "(d) a detention facility;" and relettering subsequent subsection accordingly, and

Be further amended on page 15, section 14, subsection (d), line 7 after the word "the" by striking the word "facility" and inserting in lieu thereof the new material "facilities", and

Be further amended on page 15, section 14, subsection (c), line 7 after the material "(c)" by inserting the new material "or (d)", and

Be further amended on page 15, section 14, subsection (d), line 10 after the material "detention;" by inserting the new material "the facilities specified in subsection (a) or (b) are not sufficient;", and

Be further amended on page 16, section 15, subsection (2), line 11 after the word "offense" by inserting the new material "which", and

Be further amended on page 17, section 15, subsection (5), line 4 after the material "whether the" by striking the word "child" and inserting in lieu thereof the new word "youth", and

Be further amended on page 17, section 15, subsection (7), line 12 after the word "addresses" by striking the punctuation mark "," and inserting in lieu thereof the new material ". The names and addresses of any witnesses discovered after the filing of the petition", and

Be further amended on page 17, section 16, subsection (2), line 25 after the words "under the" by striking the material "Montana Youth Act" and inserting in lieu thereof the new material "Montana Juvenile Justice Act", and

Be further amended on page 18, section 16, subsection (4), line 12 after the material "provisions of the" by striking the material "Montana Youth Act" and inserting in lieu thereof the new material "Montana Juvenile Justice Act", and

Be further amended on page 18, section 16, subsection (4), line 14 after the word and punctuation "proceedings." by adding a new subsection (5) to read as follows: "(5) If any youth is in custody or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case reguire such custody and the form the custody should take.", and

Be further amended on page 19, section 17, subsection (7), line 24 after the word "summons" by inserting the new material "on himself", and

Be further amended on page 20, section 18, subsection (a), line 9 after the word "advised" by striking the material "of his constitutional rights enumerated by the Miranda warning" and inserting in lieu thereof the new material "that he has a right to remain silent, that anything he says may be used against him, and that he has a right to be represented by counsel", and

Be further amended on page 20, section 18, subsections (b), (i), (ii) and (iii), line 11 after the material "constitutional rights" by striking the material "under the following situations:" and all of subsections (i), (ii) and (iii) and inserting in lieu thereof the new material "only upon advice of counsel;", and

Be further amended on pages 20 and 21, section 18, subsection (c), line 22 by striking all of subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows: "(c) in a proceeding alleging a youth to be a delinquent youth or a youth in need of supervision:

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.", and

Be further amended on page 21, section 18, subsection (3), line 24 after the material "court or" by inserting the new material "<u>, in the absence of the court, by</u>", and

~~Be further amended on page 21, section 18, subsection (3), line 24 after the material "advised by the" by striking the material "court or its representative that the youth may~~

Be further amended on page 22, section 18, subsection (3), line 6 after the material "commitment to" by striking the material "the department of institutions, or any other institution" and inserting in lieu thereof the new material "a detention facility or a youth forest camp or to the department of institutions for a period of more than six (6) months", and

Be further amended on page 34, section 27, line 18 after the word "agency" by inserting the new material "or the court", and

Be further amended on page 36, section 29, subsection (1), line 3 after the material "may," by inserting the new material "upon motion of the county attorney,", and

Be further amended on page 37, section 29, subsection (c), line 7 after the material "given to" by striking the material "the youth's" and inserting in lieu thereof the new material "the youth, his counsel, and his", and

Be further amended on page 38, section 29, subsection (c), line 7 after the material "to the" by striking the material "juvenile" and inserting in lieu thereof the new material "youth", and

Be further amended on page 39, section 30, subsection (2), line 9 after the word "permitted" by inserting the new material "prior to the sealing of the records", and

Be further amended on page 41, section 31, subsection (4), line 9 after the word "information" by striking the material ", unless otherwise ordered by the judge", and

Be further amended on 41, section 32, subsection (1), line 17 after the word "youth" by striking the material "reaches the age of eighteen (18) years" and inserting in lieu thereof the new material "is no longer under the jurisdiction or supervision of the court or of any agency pursuant to an order of the court", and

Be further amended on page 41, section 32, subsection (2), lines 19 through 22 by striking all of subsection (2) in its entirety and renumbering subsequent subsections to conform numerically, and

Be further amended on page 41, section 32, subsection (3), line 25 after the material "of the" by striking the material "court" and inserting in lieu thereof the new material "youth, upon petition to the youth court", and

Be further amended on page 27, section 22, subsection (2), line 17 after the word "youth" by inserting the new material "in the manner provided in section 10-1218(1), R.C.M. 1947, for consent by a youth to waiver of his constitutional rights", and

Be further amended on page 27, section 22, subsection (a), line 22 after the material "center for" by striking the word "children" and inserting in lieu thereof the new word "youths", and

Be further amended on page 29, section 22, subsection(4), line 3 after the word "time" by striking the material ", except an order committing a child to the custody of the department of institutions", and

Be further amended on page 30, section 22, subsection (6), line 11 after the material "until _____" by striking the material "attains the age of twenty-one (21) or is sooner legally discharged or placed out", and

Be further amended on page 31, section 24, subsection (1), line 17 after the material "decree."" by inserting the new material "The procedures used and idspositions permitted when this section shall conform to the procedure and disposition specified in section 10-1210, R.C.M. 1947, relating to consent adjustments without petition.", and

Be further amended on page 31, section 24, subsection (2), line 18 after the word "youth" by inserting the new material "or his counsel", and

Be further amended on page 31, section 24, lines 20 through 25 and on page 32, section 24, line 1 after the material "case." by striking all of the remaining material in line 20 and all of the material in lines 21 through line 1 on page 32, and

Be further amended on page 33, section 25, subsection (1), line 2 after the word "party" by inserting the new material "other than the state", and

Be further amended on page 24, section 19, subsection (5), lines 21 through 24 after the material "this section" by striking the material "as distinguished from transfer hearing involving a youth charged with the criminal offense set forth in section 10-1229,", and

Be further amended on page 25, section 20, subsection (5), line 3 after the material "proceeding," by striking the material "including" and inserting in lieu thereof the new material "and", and

Be further amended on page 25, section 20, subsection (5), line 4 after the material "media," by striking the material "shall not be excluded from" and inserting in lieu thereof the new material "may be permitted to be present at", and

Be further amended on page 25, section 21, subsection (1), line 18 after the word "practicable" by inserting the new material "after a youth is found to be a delinquent youth or a youth in need of supervision", and

Be further amended on page 27, section 22, subsection (a), line 9 the material "probation;" by adding a new subsection (b) to read as follows: "(b) place in a licensed foster home or a home approved by the court;", and reletter the subsequent subsections to correspond alphabetically, and

Be further amended on page 27, section 22, present subsection (b), line 11 after the word "youth" by inserting the new material " , including, but not limited to, a district youth guidance home", and

Be further amended on page 27, section 22, present subsection (c), line 13 after the word "institutions" by inserting the new material: ". Provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a detention facility and such custody shall not continue for a period of more than six (6) momths without a subsequent court order after notice and hearing"

Be further amended on page 27, section 22, present subsection (d), line 15 after the word "youth" by inserting the new material ", consisten with subsection (d) of this section", and

Be further amended on page 41, section 32, present subsection (3), line 41 after the material "court." by adding a new subsection (3) to read as follows: (3) Upon the physical sealing of the records pertaining to a youth purusant to this section any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to a fine of two hundred dollars ($200).", and

Be further amended on page 44, section 34, subsection (2), line 4 after the material "appointed as a" by inserting the new material "chief", and

Be further amended on page 44, section 34, subsection (2), line 5 after the material "qualifications:" by adding a new subsection (a) to read as follows: (a) a master's degree in the behavioral sciences;", and reletter subsequent sections to conform alphabetically, and

Be further amended on page 44, section 34, present subsection (3), line 17 after the material "duties of a" by inserting the new material "chief", and

Be further amended on page 44, section 34, subsection (3), line 18 after the word "office" by inserting the new material "; provided, preference shall be given to persons with the qualifications set forth in subsection (2) above", and

Be further amended on page 45, section 34, subsection (5), lines 4 through 6 after the word "duties" by striking the material "except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court", and

Be further amended no page 45, section 34, subsection (6), line 7 after the word "A" by inserting the new material "chief", and

Be further amended on page 47, section 36, subsection (1), line 1 after the word "permanent" by inserting the material "licensed", and

Be further amended on page 47, section 36, subsection (1), line 1 after the material "homes" by inserting the new material "or other homes approved by the court", and

Be further amended on page 47, section 36, subsection (2), line 3 after the word "The" by inserting the new material "licnesed", and

Be further amended onpage 47, section 36, subsection (3), line 6 after the word "All" by inserting the new material "licensed", and

Be further amended on page 49, section 38, line 2 after the word "youth," by inserting the material "provided, however that such sum shall not exceed the cost of reasonable care of a normal youth at home,", and

Be further amended on page 49, section 40, line 15 after the word "citizens" by inserting the new material "including youth representatives,", and

Be further amended on page 49, section 40, line 19 after the material "court," by inserting the new material "including the appointement of probation officers,", and

Be further amended on page 50, section 41, lines 3 through 4 after the word "except" by striking the material "where a hearing or a proceeding is had in the youth court on a written petition charging the commission of any felony", and inserting in lieu thereof the new material "as provided in section 10-1220(5), R.C.M. 1947", and

Be further amended on page 50, section 42, lines 12 and 13 after the word "supervision" by striking the material "or youths tending toward delinquency or in need of supervision", and

Be further amended on page 50, section 42, lines 21 and 22 after the word "supervision" by striking the material "or youths tending toward delinquency or in need of supervision", and

Be further amended on page 51, section 43, subsection (c), lines 9 through 19 by striking all of subsection (c) in its entirety and relettering subsequent subsections to conform alphabetically, and

Be further amended on page 52, section 43, subsection (d), lines 2 and 3 after the word "supervision" by striking the material "and youths tending toward delinquency and in need of supervision", and

~~Be further amended on page 52, section 45, lines 14 and 15 after the material "delinquent youths" by striking the material "and youths in need of~~

Be further amended on page 52, section 45, lines 14 and 15 after the word "supervision" by striking the material "and youths tending toward delinquency or in need of supervision", and

Be further amended on page 53, section 46, lines 5 and 6 after the word "supervision" by striking the material "and youths tending toward delinquency or in need of supervision", and

Be further amended on page 54, section 48, lines 2 and 3 after the word "supervision" by striking the material "or a youth tending toward delinquency or in need of supervision", and

Be further amended on page 54, section 49, lines 13 and 14 after the word "supervision" by striking the material "or a youth tending toward delinquency or in need of supervision", and

Be further amended on page 35, section 28, line 15 after the material "is a" by striking the material "preponderance of the evidence" and inserting in lieu thereof the new material "proof beyond a reasonable doubt", and

DO PASS AS AMENDED??

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

March 4, 1974

The meeting was called to order by Senator McKeon, chairman, at 11:00 a.m. in Room 404 of the Capitol Building.

The following bills were heard: HB 797
HB 798
HB 1041

HB 797--(Companion bills) Witnesses appearing on the bills:
798

Judge Frank Haswell, Juvenile Advisory Committee
Judge Robert S. Keller, District Juvenile justice Advisory Judge
Harold Hanser, Juvenile Advisory Committee
Helen Kampfe, " " " , Billings
Shirley Miller, Youth Development Bureau
Ray Linder, " " "
Jim Pippard, 4=C
Margaret Stewart, S.R.S.
Frank R. Sennett, Deputy Director of Rehabilitation Services

Judge Hasweel said that HB 797 provided for general revisions in relating to abused, neglected and dependent dchildren. He said it was a moderate, middle of the road approach to this problem. Judge Keller said that he has consulted with the judges of the other 49 states on juvenile law, on whether to take it from the parents approach, or from the right of the child. This laws tries to meet with this conflict, by spelling out the rights of both. He said this act could be easily amended.

Mr. Hanzer felt that the laws needed to be revised in this area because they are dealing with children that have changed substantially. The measure expands the definition of "abuse" and "neglect" so that they can be handled as one. This allows them to determine probable child neglect through the use of a temporary investigation pass.

Mrs. Kamfish said that HB 798 balances the legal rights of the child and attempts in moving away from the parent's role as the decision maker. The young person is required and asked to participate in the decision making of their fate. She said this bill would invite parents to participate, in conjunction with the attorney and child to determine who he is. Mrs. Kamfish said this also provides for rehabilitation of the youth, in channeling him back into society, and it specifies more inclusively, the roles of all persons involved.

Mrs. Miller and Mr. Linder submitted an attachment discussing

some of the provisions of the bill. It contains a declaration of purpose, basic legal rights of all persons, and seals all records from public disclosure. Mr. Linder pointed out one reservation of the bill in Section 10-1203 where it establishes as a criminal offender a youth in need of supervision who violates any condition of his probation. They found this ironic since HB 797 allows the court to intervene into family life. They wanted this section a mended so that status offenders would not be defined as criminals.

Mrs. Steward supported both bills.

Mr. Sennett felt that HB 797 was a good bill, but he had some reservations for HB 798. He questioned why the court justice systemshould handle juvenile problems. He didnot feel that they worked effectively in this area, and that the laws were just construed to resemble the old courts, and that the bill needed restructuring.

Judge Keeler said that the Status offender would not be held as a criminal, but would be placed under rehabilitation.

Senator Turnage felt that the bill needed to be more specific as to who is "licensed".

SENATOR TURNAGE MOVED THAT HB 797 BE CONCURRED IN; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

SENATOR TURNAGE MOVED THAT THE AMENDMENTS TO HB 798 BE CONCURRED IN; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

SENATOR TURNAGE MOVED THAT HB 798 AS AMENDED BE CONCURRED IN; SECONDED BY SENATOR GILFEATHER. MOTION CARRIED UNANIMOUSLY.

HB 1041--Witnesses appearing on the bill:

Morris Brusett, Legal Council
Harold Pitts, Dept. of Business Regulations
W. B. Anders, Northwestern Bank

Mr. Brusett said this bill would merely allow the legislative auditor to review all state agencies to determin that programs are effectively and efficiently administered. He said this review would not be in violation with the federal statute, and that such contents cannot be disposed to anyone except designated bank examiners. There is a penalty provision.(Attch)

Mr. Pitts, opposing the bill, said that the general accounting offices have not seen fit to allow examination of the banking system. This would allow the auditors to examina an individual's borrowing records, which have nothing to do with state borrowing. He felt this information should be kept confidential. Mr. Pitts said that there has not been a bank failure since 1930, and that their bankswork closely with the federal deposit examiners, and federal resever bank, which would not

Exhibit A

INTRODUCED BY Hall / M. Patrick

218 BILL NO. 288

10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-615, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-627, 10-628, 10-629, 10-630, 10-631, 10-633, 10-1101, 10-1102, 10-1103, 10-1104, 10-1105, 10-1106, 10-1107, 10-1108, 10-1109, 10-1110, 10-1111, AND 94-2-109

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO JUVENILES AND JUVENILE COURTS; PROVIDING FOR OTHER MATTERS RELATING TO TREATMENT AND PROCEDURES CONCERNING YOUTH; AMENDING SECTIONS 10-615, 10-627, 10-628, 10-631, 10-1101, 10-1102, 10-1103, 10-1104, 10-1105, 10-1106, 10-1107, 10-1108, 10-1109, 10-1110, 10-1111, AND 94-2-109, R.C.M. 1947; AND REPEALING SECTIONS 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630, AND 10-633.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new section to be numbered 10-1201, R.C.M. 1947, which reads as follows:

10-1201. Short title. This act may be cited as the ~~"Montana Youth Act."~~ "Montana Juvenile Justice Act" Mont Youth Court Act

Section 2. There is a new section to be numbered 10-1202, R.C.M. 1947, which reads as follows:

10-1202. Declaration of purpose. The ~~Montana Youth Act~~ Montana Juvenile Justice Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible, and to provide for the care, protection and wholesome mental and physical development of a youth coming within the provisions of the ~~Montana Youth Act~~ Montana Juvenile Justice Act;

(2) ~~to provide a program of supervision, care and rehabilitation for youth;~~ to remove from youth committing violations of the law the element of retribution and to substitute therefore a program of supervision, care and rehabilitation

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights;

~~(5)~~ to recognize the responsibility of a youth to preserve the unity of the family by respecting parental and legal authority;

(6) to acknowledge that for every legal privilege or right conferred on a youth by the Montana Youth Act, a youth has a correlative duty to not abuse that privilege or right;

(7) to compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(8) to promote a youth's respect for law and the legal system by recognizing a youth's rights, responsibilities and duties as an individual citizen of the community.

Section 3. There is a new section to be numbered 10-1203, R.C.M. 1947, which reads as follows:

10-1203. Definitions. For the purposes of the ~~Montana Youth Act~~, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the

reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine ~~when and~~ with whom the youth shall live; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of ~~a youth whose parenthood has not been judicially established~~; an illegitimate youth unless his paternity is established by adjudication or by other clear and convincing proof

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the judge and probation officers. the court established pursuant to this act to hear all proceedings in which a youth is alleged to be a delinquent a youth in need of supervision or a youth in need of care, and includ the youth care

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

~~(b) who, having been placed on probation as~~ a

~~delinquent youth or a youth in need of supervision, violates any condition of his probation.~~

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law ~~regarding~~ regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or (d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

~~By committing a drug offense, a youth may in the discretion of the court be regarded as either a youth in need of supervision or a delinquent youth.~~

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) 'Custodian' means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody.

Section 4. There is a new section to be numbered 10-1204, R.C.M. 1947, which reads as follows:

10-1204. Constitutionality. The provisions of this act are separate and severable. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one

(16) 'Necessary parties' includes the youth, his parents, guardian, custodian or spouse;

(17) 'Detention facility' means a residential facility for the detention and rehabilitation of delinquent youth such as Pine Hills School in Miles City or Mountain View School in Helena.

or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. There is a new section to be numbered 10-1205, R.C.M. 1947, which reads as follows:

10-1205. Number and gender. The singular includes the plural, the plural includes the singular, and the masculine includes the feminine unless the context indicates otherwise.

Section 6. There is a new section to be numbered 10-1206, R.C.M. 1947, which reads as follows:

10-1206. Jurisdiction of the court. (1) The court has exclusive original jurisdiction of all proceedings under the Montana ~~Youth Act~~ Juvenile Justice Act in which a youth is alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, or concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.

(2) Justice, municipal and police courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth except that the following alleged violations are under the exclusive jurisdiction of the court:

(a) driving while intoxicated as defined in section 32-2142, R.C.M. 1947;

(b) failing to stop at an accident as defined in section 32-1202, R.C.M. 1947; and

(c) driving without a valid license or permit as defined in sections 31-125 and 31-127, R.C.M. 1947, after having been previously convicted of the same offense.

Section 7. There is a new section to be numbered 10-1207, R.C.M. 1947, which reads as follows:

10-1207. Venue and transfer. (1) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, and the youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law;

(c) the county of residence of the youth's parents or guardian.

(2) A change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial and speedy hearing and

final disposition of the case.

(3) In the case of a youth sixteen (16) years of age or older who is accused of one of the serious offenses listed in section 10-1229, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court the charge shall be filed and trial held in the district court of the county where the offense occurred.

Section 8. There is a new section to be numbered 10-1208, R.C.M. 1947, which reads as follows:

10-1208. Retention of jurisdiction. Once a court obtains jurisdiction over a youth the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the state department of institutions;

(3) in any event, at the time the youth reaches the age of twenty-one (21) years.

Section 9. There is a new section to be numbered 10-1209, R.C.M. 1947, which reads as follows:

10-1209. Intake procedure. (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a

delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act; and the Constitutions of the State of Montana and the United States.✓

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or custody, whether such detention or custody should be continued.

Once relevant information is secured, the probation officer shall:

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or ~~detention~~ other dispositions authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in custody or

detention must be filed within five (5) working days from the date the youth was first confined or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

Section 10. There is a new section to be numbered 10-1210, R.C.M. 1947, which reads as follows:

10-1210. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or ~~detention~~ other disposition imposed under this section against any youth must conform to the following

(4) The following dispositions may be imposed by informal adjustment:
(a) Probation;
(b) Placement of the youth in a licensed foster home or other home approved by the court;
(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;
(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a detention facility as defined by this act and such commitment shall not

procedures:

(a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been detained or will be in any way

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.

Section 11. There is a new section to be numbered 10-1211, R.C.M. 1947, which reads as follows:

10-1211. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when

order of the court, after notice and hearin

there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

Section 12. There is a new section to be numbered 10-1212, R.C.M. 1947, which reads as follows:

10-1212. Detention of youth. A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court; he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act.

Section 13. There is a new section to be numbered 10-1213, R.C.M. 1947, which reads as follows:

10-1213. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to

that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.

(3) Whenever any peace officer has apprehended a youth, he shall, ~~as soon as practicable~~ immediately, notify the probation officer of such fact and shall, as soon as practicable, provide the probation officer with a written report of his reasons for the apprehension.

Section 14. There is a new section to be numbered 10-1214, R.C.M. 1947, which reads as follows:

10-1214. Place of detention. (1) A youth alleged to be a delinquent youth or youth in need of supervision may be detained only in:

(a) a licensed foster home or a home approved by the court;

(b) a facility operated by a licensed child welfare agency;

(c) a ~~detention home~~ district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court; or

(d) a detention facility.

(e) ~~(d)~~ any other suitable place or facility, designated or operated by the court. The youth may be detained in a jail or other facility for the detention of adults only if: the ~~facility~~ facilities in subsection (c) or (d) are not available; the detention is in an area separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; and the court so orders. the facilities specified in subsection (a) or (b) are not sufficient

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(3) A youth alleged to be in need of care shall be placed only in the facilities stated in subsections (a) and (b) of subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law.

Section 15. There is a new section to be numbered 10-1215, R.C.M. 1947, which reads as follows:

10-1215. Petition -- form and content. A petition initiating proceedings under this act shall be signed by the county attorney and shall be entitled, "In the Matter of _____, a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the

parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the ~~child~~ youth is in custody, and if so, the place of detention or care and the time he was taken into custody;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses, shall be furnished to the youth upon request. the names and addresses of any witnesses discovered after the filing of the petition.

Section 16. There is a new section to be numbered 10-1216, R.C.M. 1947, which reads as follows:

10-1216. Summons. (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.

(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the ~~Montana Youth Act~~ Montana Juvenile Justice Act and shall have

attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the ~~Montana Youth Act~~ Montana Juvenile Justice Act relating to detention criteria and post-detention proceedings.

(5) If any youth is in custody or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall as soon as practical, conduct a hearing in order to determine whether the circumstance of the case require such custody and the form the custody should take.

Section 17. There is a new section to be numbered 10-1217, R.C.M. 1947, which reads as follows:

10-1217. Service of summons. (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least five (5) days before the time stated for appearance.

(2) Service of summons on all other persons designated in subsection (1) of section 10-1216 shall be made in accordance with Rule 4(D) of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least five (5) days before the time stated for

appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding under this act, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements in this act by the parent or parents. A return endorsed upon the summons showing inability to serve summons in compliance with section 18(2) of this act constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his

counsel may waive service of summons in his behalf.

Section 18. There is a new section to be numbered 10-1218, R.C.M. 1947, which reads as follows:

10-1218. Basic legal rights. (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) the youth shall be immediately and effectively advised of ~~his constitutional rights enumerated in the Miranda warning~~ his const. rights, including but not limited to that he has the right to remain silent, that anything he says may be used against him, and that he has a right to be represented by counsel;

(b) the youth may waive such constitutional rights ~~under the following circumstances~~: only upon advice of counsel

(i) when the youth is under the age of twelve (12) years, the parents of the youth may make an effective waiver;

reinstate

(ii) when the youth is over the age of twelve (12) years, and the youth and his parents agree, they may make an effective waiver; and

(iii) when the youth is over the age of twelve (12) years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) where there has been no effective waiver the law enforcement officer may continue questioning; however, no confession, admissions or exculpatory statements made by the youth may be admitted into evidence against the youth in any

(c) in a proceeding alleging a youth to be delinquent youth ~~or a youth in need of supervision~~;

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth;

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

formal proceeding under this act.

(2) Title 95, R.C.M. 1947, shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) No youth shall be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge.

(b) No fingerprint records or photographs shall be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(c) At such time as the proceedings in the matter including appeals, are complete, the fingerprint records and photographs shall be destroyed; except that such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision as set forth in subsection (1) of this section, the youth, parents and guardian of the youth shall be advised by the court or its representative that the youth may be represented by

counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to ~~the department of institutions, or any other institution~~ may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to: the opportunity to introduce evidence and otherwise be heard on the party's own behalf; confront and cross-examine witnesses testifying against the party; and admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Act and at any other time specified in the Youth Act or other law.

(7) All post trial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure shall be available to a youth proceeded against under this act.

Section 19. There is a new section to be numbered 10-1219, R.C.M. 1947, which reads as follows:

10-1219. Time limitations on petition hearing. Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within fifteen (15) days after all service is completed. Delays resulting from service of process, or delays resulting from legal actions taken in behalf of the youth, shall not be included in the fifteen (15) day time limitation.

Section 20. There is a new section to be numbered 10-1220, R.C.M. 1947, which reads as follows:

10-1220. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses; in the absence of such demand, a jury trial is waived. If the youth denies

some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearings shall be set forthwith and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses; if the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court deems appropriate.

(4) The youth charged in a petition must be present at the hearing and if brought from detention to the hearing, shall not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, ~~as distinguished from transfer hearings involving a youth charged with the criminal offense set forth in section 10-1229~~, the general public shall be excluded and only such persons admitted as have a direct interest in the case;

except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, ~~including~~ and representatives of public information media, ~~shall not be excluded from the hearing~~ may be permitted to be present at from the hearing.

(6) If the court finds on the basis of a valid admission by a youth of the allegations of the petition or if a youth is found to be a delinquent youth or a youth in need of supervision the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3.

Section 21. There is a new section to be numbered 10-1221, R.C.M. 1947, which reads as follows:

10-1221. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth

examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in section 10-1220, subsections (3), (4), and (5). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of

evidence on the issues of need for treatment and rehabilitation.

Section 22. There is a new section to be numbered 10-1222, R.C.M. 1947, which reads as follows:

10-1222. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth; including but not limited to, a district youth guidance home.

(d) transfer legal custody to the department of institutions; Provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a detention facility and such custody shall not continue for a period of time of more than six (6) months without a subsequent court order after notice and hearing.

(e) such further care and treatment or evaluation that the court deems beneficial to the youth consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody the court may, with the consent of the youth, or in the manner provided in section 10-1218(1), R.C.M. 1947, for consent by a youth to waiver of his constitutional rights, after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for ~~children~~ youth or

(b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the

department of institutions of the finding. The director of the department of institutions shall then designate to the court the youth detention facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed forty-five (45) days for the purpose of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as

provided by subsection (2)(b) above.

(4) Any order of the court may be modified at any time, ~~except an order committing a child to the custody of the department of institutions~~.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

leave in - better to assess by correctional personnel

ORDER OF COMMITMENT

State of Montana, County of _____, ss:

In the district court for the _____ judicial district.

On the _____ day of _____, 19__, _____, a minor of this county, _____ years of age, was brought before me charged with _____. Upon due proof I find that _____ is a suitable person to be committed to the department of institutions.

It is ordered that _____ be committed to the department of institutions until _____ ~~attains the age of twenty-one (21) or is sooner legally discharged or placed out.~~

The names, addresses and occupations of the parents are:

Name	Address	Occupation
_____	_____	_____
_____	_____	_____

The names and addresses of their nearest relatives are:

_____

_____

Witness my hand this _____ day of _____ A.D. 19__.

_____

Judge

Section 23. There is a new section to be numbered

10-1223, R.C.M. 1947, which reads as follows:

10-1223. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this act.

Section 24. There is a new section to be numbered 10-1224, R.C.M. 1947, which reads as follows:

10-1224. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision, and before the entry of a judgment, the court may, on motion of counsel for the youth, or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree." The procedures used and dispositions permitted when this section or his counsel

shall conform to the procedure and disposition specified in Section 10-1230, R.C.M. 1947 relative to consent adjustments without petition.

(2) If the youth objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. ~~If the youth does not object, but an objection is made by the youth's counsel, the court after consultation with probation services shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree, and may, in its discretion, enter the consent~~

~~decree.~~

(3) If, either prior to discharge by probation services, or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition shall not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of six (6) months, the probation officer shall submit a report at the end of each six (6) month period which shall be reviewed by the court.

Section 25. There is a new section to be numbered

10-1225, R.C.M. 1947, which reads as follows:

10-1225. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this act if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to, or withholds it from, one (1) or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

Section 26. There is a new section to be numbered 10-1226, R.C.M. 1947, which reads as follows:

10-1226. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices,

subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Montana Youth Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

Section 27. There is a new section to be numbered 10-1227, R.C.M. 1947, which reads as follows:

10-1227. Use of private agencies by public agency. When the legal custody of a youth is vested in a public agency under the provisions of this act the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary but not less often than once each six (6) months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

Section 28. There is a new section to be numbered 10-1228, R.C.M. 1947, which reads as follows:

standard of proof for probation revocation?

10-1228. Probation revocation -- disposition. A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation." Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations. The standard of proof in probation revocation proceedings is a ~~preponderance of the evidence~~ proof beyond a reasonable doubt and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

Section 29. There is a new section to be numbered

10-1229, R.C.M. 1947, which reads as follows:

10-1229. Transfer to criminal court. (1) After a petition has been filed alleging delinquency the court may, before hearing the petition on its merits, transfer the matter of prosecution to the district court if: upon motion of the county attorney

(a) the youth charged was sixteen (16) years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in section 94-5-101, R.C.M. 1947.

(ii) arson as defined in section 94-6-104, R.C.M. 1947;

(iii) aggravated assault as defined in section 94-5-202, R.C.M. 1947;

(iv) robbery as defined in section 94-5-401, R.C.M. 1947;

(v) burglary or aggravated burglary as defined in section 94-6-204, R.C.M. 1947;

(vi) sexual intercourse without consent as defined in section 94-5-503, R.C.M. 1947;

(vii) aggravated kidnapping as defined in section 94-5-303, R.C.M. 1947;

(viii) possession of explosives as defined in section 94-6-105, R.C.M. 1947;

(ix) criminal sale of dangerous drugs for profit as

included in section 54-132, R.C.M. 1947.

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury; and

(c) notice in writing of the time, place and purpose of the hearing is given to ~~the youth's~~ the youth, his counsel, and his parents, guardian or custodian at least ten (10) days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged; and

(ii) the seriousness of the offense and the protection of the community requires treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law

enforcement agencies, youth courts in other jurisdictions, prior periods of probation and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services and facilities currently available to the ~~juvenile~~ youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (2)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it deems proper.

Section 30. There is a new section to be numbered 10-1230, R.C.M. 1947, which reads as follows:

10-1230. Law enforcement records. (1) All law enforcement records concerning a youth, except traffic records, shall not be open to public inspection nor their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) Montana law enforcement officers when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense for the purpose of a presentence;

(f) the county attorney; or

(g) the youth, his parent, guardian or counsel.

Section 31. There is a new section to be numbered 10-1231, R.C.M. 1947, which reads as follows:

10-1231. Youth court records. (1) Youth court records, including social, medical and psychological records, reports of preliminary inquiries, predispositional studies and supervision records of probationers, are open to inspection only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff, or the attorney for a convicted party, who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this act, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions and other papers filed in a case,

transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection by those persons and agencies listed in subsection (1) of this section, and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, ~~unless otherwise ordered~~ by ~~the judge~~.

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Section 32. There is a new section to be numbered 10-1232, R.C.M. 1947, which reads as follows:

10-1232. Disposition of records. (1) All court findings, orders, judgments and the legal and social files and records of the court, probation services and law enforcement agencies pertaining to a youth coming under this act shall be physically sealed when the youth ~~reaches the age of eighteen (18) years.~~ is no longer under the jurisdiction or supervision of the court or of any agency pursuant to an order of the court

~~(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's eighteenth birthday the above records and files shall be physically sealed upon termination of the extended jurisdiction.~~

2(2) Youth court records, probation officer's records, and all other reports of social and clinical studies shall not be opened to inspection except by consent of the ~~court.~~ youth, upon petition to the youth court

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the ~~previous subsection~~ shall be subject to a fine of two hundred dollars ($200)

4 3(3) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after ten (10) years from the date of sealing.

5 4(3) This section shall not apply to youth traffic records.

Section 33. There is a new section to be numbered 10-1233, R.C.M. 1947, which reads as follows:

10-1233. Youth court judge. (1) Each judicial district in the state shall have at least one (1) judge of the youth court. His duties shall be:

(a) to appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) to conduct hearings on youth court proceedings under this act;

(c) to perform any other functions consistent with the legislative purpose of this act.

(2) In each multi-judge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of

service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

If the judges in any multi-judge judicial district do not establish such court rule within sixty (60) days of the enactment of the Montana Youth Act, the Montana supreme court shall establish an appropriate rule for such judicial district.

Section 34. There is a new section to be numbered 10-1234, R.C.M. 1947, which reads as follows:

10-1234. Probation officers -- powers -- duties -- qualifications. (1) The youth division judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this act. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers shall approximate those required for probation officers insofar as possible. A chief probation officer shall be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this act. No person

while serving as a law enforcement officer shall be appointed or perform the duties of a full-time or part-time probation officer.

(2) After July 1, 1975, any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences or

(b) a bachelor's degree from an accredited college or university in the behavioral sciences, and at least one (1) year's experience in work of a nature related to the duties of a probation officer as set forth in subsection (4) of this section; or

(c) a bachelor's degree in any field and at least three (3) years' experience in work related to the duties of a probation officer as set forth in subsection (4) of this section.

(3) Prior to July 1, 1975, the judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer. Provided, preference shall be given to persons with qualifications set forth in subsection (2) above.

(4) A probation officer shall:

(a) perform the duties set out in section 10-1210;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the

court.

(5) A probation officer shall have no power to make arrests or to perform any other law-enforcement functions in carrying out his duties ~~except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court~~.

(6) A chief probation officer shall receive for his services a sum specified by the court upon appointment; however, the judge may employ him on a yearly salary, not to exceed eleven thousand dollars ($11,000) or on a per diem basis at the rate of forty dollars ($40) per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one (1) county whereby such county shall pay the entire salary.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety percent (90%) of the

salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed for actual expenses incurred.

Section 35. There is a new section to be numbered 10-1235, R.C.M. 1947, which reads as follows:

10-1235. Order of adjudication -- non-criminal. No commitment of any youth to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this act. Neither the disposition of a youth under this act, nor evidence given in youth court proceedings under this act, shall be admissible in evidence except as otherwise provided in this act.

Section 36. There is a new section to be numbered 10-1236, R.C.M. 1947, which reads as follows:

10-1236. Foster homes. (1) The youth court may establish procedures for finding, maintaining and

administering temporary and permanent licensed foster homes or other homes approved by the court for youth within the provisions of this act.

(2) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law.

(3) All licensed foster homes established shall be financed by the department of social and rehabilitation services as set forth in section 71-210(b), R.C.M. 1947.

Section 37. Section 10-627, R.C.M. 1947, is renumbered 10-1237, and is amended to read as follows:

"~~10-627~~ 10-1237. ~~Foster--homes------youth--homes~~ Youth detention home. ~~In-each-county-the-chief--probation--officer with--the--approval--of--the-judge,-shall-select-a-number-of family-homes,-to-be-known-as-foster-homes,-where--delinquent children--may--be--placed--permanently--or-temporarily-while disposition-is-being-made.--It-shall--be--the--duty--of--the county--commissioners--to--provide-funds-for-payment-of-such foster-parents-at-a-rate--to--be--determined--by--the--court judge.~~

In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth detention home, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent ~~children~~ youths and youth in need of supervision may be detained until final disposition, which

place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint ~~a superintendent--and-a-matron~~ such personnel as required, who shall have charge of said home and of the ~~children~~ youths detained therein.

~~Such--superintendent-and-matron-shall-be-a-suitable-and discreet-person,-qualified-as--teacher--of--children.~~ Such home shall be furnished in a comfortable manner, as nearly as may be as a family home. The compensation of such ~~superintendent--and--matron~~ personnel shall be fixed by the court, and such compensation and the maintaining of such home shall be paid out of the county treasury."

Section 38. Section 10-615, R.C.M. 1947, is renumbered 10-1238, and is amended to read as follows:

"~~10-615~~ 10-1238. Support of ~~delinquent--child~~ youth committed to a custodial agency. When a ~~delinquent--child~~ youth under this act is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of such ~~delinquent child~~ youth, compensation for the care of such ~~delinquent child~~ youth, when approved by order of the court, shall be a charge upon the county, or the appropriate division thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct, such sum

as will cover, in whole or in part, the support of such ~~delinquent--child~~ youth, provided however that such sum shall not exceed the cost of reasonable care of a normal child at home and if such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or said cost may be collected in a civil action against the parent or parents."

Section 39. Section 10-631, R.C.M. 1947, is renumbered 10-1239.

Section 40. Section 10-628, R.C.M. 1947, is renumbered 10-1240, and is amended to read as follows:

"~~10-628~~-10-1240. ~~Juvenile~~ Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, including youth representatives which committee shall be designated as a ~~juvenile~~ youth court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the ~~juvenile~~ youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention homes~~, and in the selection of foster homes~~."

Section 41. There is a new section to be numbered 10-1241, R.C.M. 1947, which reads as follows:

10-1241. Publicity. No publicity shall be given to the identity of an arrested youth or to any matter or proceeding

in the youth court involving a youth proceeded against as, or found to be a delinquent youth or youth in need of supervision except as provided in section 10-1220(5), RCM 1947 ~~where a hearing or a proceeding is had in the youth court on a written petition charging the commission of any felony~~.

Section 42. Section 10-1101, R.C.M. 1947, is renumbered 10-1242, and is amended to read as follows:

"~~10-1101~~-10-1242. Establishment of district youth guidance home program. The legislative assembly, in recognition of the wide and varied needs of ~~juvenile delinquents---and---juveniles---tending--toward--delinquency~~ delinquent youths and youths in need of supervision ~~or youths tending toward delinquency or in need of supervision~~ of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by this act a district youth guidance home program to provide facilities and services for the rehabilitation of ~~juvenile--delinquents--and--juveniles tending--toward--delinquency~~ delinquent youths and youths in need of supervision ~~or youths tending toward delinquency or in need of supervision~~ and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

Section 43. Section 10-1102, R.C.M. 1947, is

renumbered 10-1243, and is amended to read as follows:

"~~10-1102~~ 10-1243. Definitions. ~~Definitions~~ For purposes of this act:

(a) ~~Juvenile---delinquent.----A--delinquent--child--is defined-in-section-10-602,-R.C.M.-1947.~~ Delinquent youth. A youth as defined in section 10-1203(12).

(b) A youth in need of supervision. A youth as defined in section 10-1203(13).

~~(b)--~~(c) A juvenile tending toward delinquency. Any person under the age of twenty-one (21) years over whom the ~~juvenile~~ youth court may have jurisdiction ~~under-section 10-603,-R.C.M.-1947~~ as provided under subsections (a) and (b) above, and who a ~~district~~ youth court judge may find to have committed any of the acts of a delinquent ~~child~~ youth ~~as-defined-by-section-10-602,-R.C.M.-1947~~ or a youth in need of supervision, but who in the court's discretion has not yet become a delinquent ~~child~~ youth or a youth in need of supervision or a youth tending toward delinquency or in need of supervision as therein defined.

~~(c)--~~(d) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state institutions, the function of which is to provide a home and guidance through adult supervision for ~~juvenile--delinquents--and--juvenile tending--toward--delinquency~~ delinquent youths and youths in need of supervision ~~and-youths-tending-toward-delinquency-and-in-need-of-supervision~~."

Section 44. Section 10-1103, R.C.M. 1947, is renumbered 10-1244.

Section 45. Section 10-1104, R.C.M. 1947, is renumbered 10-1245, and is amended to read as follows:

"~~10-1104~~ 10-1245. Governmental aid to nonprofit organizations. (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations, to provide facilities and services for ~~juvenile----delinquents---and---juveniles---tending---toward delinquency~~ delinquent youths and youths in need of supervision ~~and-youths-tending-toward-delinquency-or-in-need of-supervision~~ in district youth guidance homes, and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to provide funds, materials, facilities and services for district youth guidance homes."

Section 46. Section 10-1105, R.C.M. 1947, is renumbered 10-1246, and is amended to read as follows:

"~~10-1105~~ 10-1246. Authority of ~~district~~ youth court

judge to commit ~~juvenile-delinquents~~ delinquent youths and youths in need of supervision. A ~~district~~ youth court judge is hereby authorized in his discretion to place a ~~juvenile delinquent-or-juvenile-tending-toward-delinquency~~ delinquent youth or a youth in need of supervision ~~or-a-youth-tending-toward-delinquency-or-in-need-of-supervision~~ to said district youth guidance home for any period of time up to the child's twenty-first birthday subject to the approval of its sponsoring nonprofit corporation or association."

Section 47. Section 10-1106, R.C.M. 1947, is renumbered 10-1247, and is amended to read as follows:

"~~10-1106~~-10-1247. Petition by person under ~~21~~ twenty-one (21) to be placed in district youth guidance home. ~~Any-person-under-the-age-of-twenty-one-(21)-years~~ Any person under the age of eighteen (18) years, or any person between the ages of eighteen (18) and twenty-one (21) years, who is still within the jurisdiction of the youth court may petition the ~~district~~ youth court of a district in which a district youth guidance home has been established to be placed ~~to~~ in a district youth guidance home for any period of time up to said person's twenty-first birthday."

Section 48. Section 10-1107, R.C.M. 1947, is renumbered 10-1248, and is amended to read as follows:

"~~10-1107~~-10-1248. Continuing jurisdiction of ~~district~~ youth court over ~~juveniles~~ youths. The ~~district~~ youth court

placing a ~~juvenile-or-juvenile--tending--toward--delinquency~~ delinquent youth ~~or-a-youth-in-need-of-supervision~~ or a youth in need of supervision ~~youth-tending-toward-delinquency-or-in-need-of-supervision~~ to a district youth guidance home shall retain continuing jurisdiction over said ~~juvenile~~ youth until said ~~juvenile~~ youth becomes twenty-one (21) years of age or is otherwise discharged by order of the court."

Section 49. Section 10-1108, R.C.M. 1947, is renumbered 10-1249, and is amended to read as follows:

"~~10-1108~~-10-1249. Per diem charge to financially able parents. A ~~district~~ youth court judge placing a ~~juvenile delinquent--or--a--juvenile--tending--toward--delinquency-to~~ delinquent youth or a youth in need of supervision ~~or-a-youth-tending-toward-delinquency-or-in-need-of-supervision~~ in a district youth guidance home may, if the parent or parents of the ~~juvenile~~ youth are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a per diem charge not to exceed the per diem charge established by the department of institutions for each ~~child~~ youth placed ~~to~~ in the Montana children's center."

Section 50. Section 10-1109, R.C.M. 1947, is renumbered 10-1250, and is amended to read as follows:

"~~10-1109~~-10-1250. Placement of ~~juveniles~~ youths by department of institutions. The department of institutions

is hereby authorized as part of its aftercare program to place a ~~juvenile~~ delinquent youth or a youth in need of supervision in a district youth guidance home subject to the approval of its sponsoring nonprofit corporation or association."

Section 51. Section 10-1110, R.C.M. 1947, is renumbered 10-1251.

Section 52. Section 10-1111, R.C.M. 1947, is renumbered 10-1252.

Section 53. Section 94-2-109, R.C.M. 1947, is amended to read as follows:

"94-2-109. Responsibility. ~~(1) No person is capable of committing any offense unless he has attained his sixteenth birthday at the time the act in question was committed. Any person who has not yet attained his eighteenth birthday shall be subject to the law as provided in title 10, chapter 6, R.C.M. 1947.~~

~~(2)~~--A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense."

Section 54. Sections 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630 and 10-633 are repealed.

-End-

ROLL CALL

SENATE JUDICIARY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974 Date: 3-1-74 11 a.m.

NAME	PRESENT	ABSENT	EXCUSED
Luke McKeon	✓		
Pat Gilfeather	✓		
Paul Boyland	✓		
Mrs. Boots Hall			✓
Miles Romney			✓
Glenn Drake	✓		
Tom Harrison			✓
Jim Moore	✓		
Jean Turnage	✓		

Each day attach to minutes

DATE 3-4-74 - 11 a.m.

COMMITTEE ON JUDICIARY BILL NO. _____

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One	
			Support	Oppos
[illegible]	Youth Development Bureau	HB 798	X	
Ron Wallis	SRS - C's Program	HB 798	X	
Ray Snider	Youth Development	HB 798	X	
Ada Enid	YDB	HB 798		
[illegible]	SRS			
Helen Pyne	[illegible]	797	X	
[illegible]	[illegible]	[illegible]	X	
Richard Cromwell	JJAC	HB 797 HB 798	✓	
Barbara Kelly	AAUW	HB 797 [illegible]	X	
[illegible]	[illegible]	HB 797 HB 798	X	
Jean Pigozzi	4-C	797 798	X X	
J. Margaret Stuck	SRS - Child welfare	797 [illegible]	X	
[illegible]	SRS	797	✓	
Robert W. Sandock Jr	SRS Child Welfare - NRC	797 798	X	
[illegible]	Dept Bus Reg	HB 1041		X
Harold Pitts	Dept of Bus. Reg	HB 1041		X
Alex T. Peddy	Mont. Bankers Assoc	HB 1041		X
[illegible]	Mont. Bankers Assoc	HB 1041		X
Mike Sanders	Myself	H.B. 798	Neither	
Joe Nolan	MFCS	798		
Alice Cannon	(AAUW) MST Div Amer Assoc Univ Women	797 798	✓	
(Williams)	(AAUW) Legislative Com Chairman	797 798	✓	

(Please leave prepared statement with Secretary)

Testifiers

Shirley M. Miller
Bureau Chief
Youth Development Bureau

Raymond P. Linder
Planning and Research Analyst
Youth Development Bureau

HB 798

"MONTANA YOUTH COURT ACT" introduced in the 43rd Legislative Assembly by: John C. Hall, and Pat McKittrick.

Introduction

These remarks, offered to this Senate Judiciary Committee, attempt to respond to the proposed Montana Youth Court Act in the framework of Article II, Section 15 (Rights of persons not adults) of the 1972 Montana Constitution.

Article II, Section 15

> "The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

YOUTH DEVELOPMENT

The Youth Development Bureau is engaged in program development and comprehensive planning for preventing youth from entering the juvenile justice system and criminal careers. Youth development and delinquency prevention are our day in and day out concerns. Our workers are responsible for the planning and establishment of such facilities and services as: group homes, attention homes, alternative education programs, youth center activities, a Youth Commission, Juvenile Defender, Summer Camp experiences, employment assistance, Family Services Counseling, Parent Effectiveness Training, and so forth. We are here before this committee as interested citizens and also as concerned professionals. Specifically, our remarks are arranged according to Section and Page numbers of the Third Reading version of HB 798.

page 2, lines 14-17

Section 10-1202: Subsection (2). Declaration of Purpose. The intention expressed here to offer youth a program of supervision, care and rehabilitation illustrates the most noble and humane philosophy that has suffused the entire history of the Youth Court movement.

page 5, lines 12-22

Section 10-1203: Subsection (13). Definitions. For purposes of institutional response to status offenders, the framers of this act have distinguished between acts that would be criminal if committed by an adult and those of which only a youth may commit. In other words, a truant is not so much a criminal as someone who requires some assistance and direction for the completion of his/her education.

22, 6

Section 10-1218: Basic Legal Rights. Through the work of the Juvenile Justice Advisory Committee and the House Judiciary Committee, this section clearly and forthrightly sets out the basic legal condition which a youth may expect in his contact with the Juvenile Justice System.

page 44, line 19

Section 10-1232: Disposition of Records. Humans forgive and forget and can admit of error. Computers never do. This section provides a guarantee to Montana Youth that they can leave their past mistakes to the past and have an opportunity to move forward into the future to become productive citizens.

A reservation

We are pleased to offer our support to this bill and have enumerated only a few of its many good points. We do feel compelled to point out one of our serious concerns.

page 5, lines 9-11

Section 10-1203: Subsection (12b). Definitions. This subsection establishes as a criminal offender a youth in need of supervision who violates any condition of his/her probation. We find the treatment suggested here doubly ironic in light of the provisions of a companion bill (HB 797) which allows the court to intervene in the family life for the good of the youth. We fail to see how the judicial intervention proposed here will benefit anyone, including society. To paraphrase an old saying that doctors bury their mistakes, we cannot allow the judicial system to jail their mistakes. Status offenders should not be turned into criminals no matter what the rationale offered. In addition, our constitution (Article II, Section 15) may not allow it. We ask this committee to amend this section so that status offenders are not defined as criminals.

Closing

Thank you for your time and concern. We would be happy to answer questions you may have.

TESTIMONY ON H.B. 798 TO THE SENATE JUDICIARY COMMITTEE

Mr. Chairman, Members of the Committee:

I appear before you as a lone dissenter on the final draft of what was originally called the Montana Youth Act, specifically, H.B. 798, the Montana Youth Court Act, as it is now referred to.

I am extremely concerned for the young people of this state and for how the so-called justice system deals with them as individuals. The current juvenile justice system we have in operation has failed miserably. Juvenile delinquency in this country and in this state is on the rise. We are seeing more and more problems with juveniles and we are finding that the current "justice system" does not deal effectively in either bringing a halt to the growth of delinquency in this country or in the rehabilitation of those who enter that system and are most forceably touched by it.

The records show that a large percentage of those men and women who eventually arrive in the prison system in this country have had a history of incarceration in juvenile facilities. The juvenile institutions do not rehabilitate, for the most part, those young people who are forced into them. This should bother those of you who are concerned about the future of the youth of this country.

Montana has a new Constitution as of July 1, 1973. In this Constitution it is stated that Montana's children and youth shall enjoy all of the basic rights under that Constitution and in addition to those basic rights they are also afforded other rights and privileges because of their special needs as a class in our society. Montana's Juvenile Justice Advisory Council has failed miserably to live up to the ideals and philosophy of Montana's new Constitution. What you have before you in the guise of a youth act, is for the most part, a youth court procedures act which updates Montana's laws, recodifies them, and brings them into conformity with the Supreme Court decisions made over the last ten years. It does not do justice to Montana's young people.

What you have before you is the skeleton without any meat on the bones, very minutely remodeled, but basically made up in appearance and size and construed to resemble the status quo system under which we have been living during the past 30 some years which has, as I have indicated earlier, failed Montana's young so miserably.

For those of you who do care what happens to the young people in this state I would hope that you don't consider the passage of this deformed, ill-functioning skeleton as a significantly improved system of justice for our young people because it is not. What the Juvenile Justice Advisory Council did and what the legislature will do with the passage of this Act is to merely throw Montana's young people a bag of bones, without meat and with very few real benefits for those young people.

(over)

This legislature and those members of this committee who will return in the coming sessions need to seriously look at Montana's juvenile justice system and restructure it so that it will meet the very real needs of those young people about whom we are all so concerned. I strongly recommend that your committee encourage the legislative council to implement a study of the justice system (which it was asked to do with the passage of S.J.R. 4 in 1973) which will come up with some realistic and far reaching recommendations to implement Montana's constitutional article on the rights of children and youth.

Thank you.

Frank R. Sennett

Frank R. Sennett

10-1315. **Responsibility of providing protective services.** The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this act and shall have the authority pursuant to this act to take temporary, limited or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

Section 12. There is a new section to be numbered 10-1322, R.C.M. 1947, which reads as follows:

10-1322. **Punishment of parents and other adults.** (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

Section 13. Sections 10-501 through 10-519, R.C.M. 1947, are repealed.

Section 14. Section 10-901 is renumbered section 10-1303; section 10-902 is renumbered section 10-1304; section 10-903 is renumbered section 10-1305; section 10-904 is renumbered section 10-1306; section 10-905 is renumbered section 10-1307; section 10-520 is renumbered section 10-1316; section 10-521 is renumbered section 10-1317; section 10-522 is renumbered section 10-1318; section 10-523 is renumbered section 10-1319; section 10-524 is renumbered section 10-1320; and section 10-525 is renumbered section 10-1321.

Approved March 28, 1974

CHAPTER NO. 329

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO JUVENILES AND JUVENILE COURTS; PROVIDING FOR OTHER MATTERS RELATING TO TREATMENT AND PROCEDURES CONCERNING YOUTH; AMENDING SECTIONS 10-615, 10-627, 10-628, 10-631, 10-1101, 10-1102, 10-1103, 10-1104, 10-1105, 10-1106, 10-1107, 10-1108, 10-1109, 10-1110, 10-1111, AND 94-2-109, R.C.M. 1947; AND REPEALING SECTIONS 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630, AND 10-633.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 10-1201, R.C.M. 1947, which reads as follows:

10-1201. **Short title.** This act may be cited as the "Montana Youth Court Act."

Section 2. There is a new section to be numbered 10-1202, R.C.M. 1947, which reads as follows:

10-1202. **Declaration of purpose.** The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible, and to provide for the care, protection and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefore a program of supervision, care and rehabilitation;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

Section 3. There is a new section to be numbered 10-1203, R.C.M. 1947, which reads as follows:

10-1203. **Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine with whom the youth shall live and for what period; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his

rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof;

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this act to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court, the judge and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) "Custodian" means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody;

(16) "Necessary parties" include the youth, his parents, guardian, custodian or spouse;

(17) "Detention facility" means a residential facility for the detention and rehabilitation of delinquent youth such as Pine Hills School in Miles City and Mountain View School in Helena.

Section 4. There is a new section to be numbered 10-1204, R.C.M. 1947, which reads as follows:

10-1204. **Constitutionality.** The provisions of this act are separate

and severable. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. There is a new section to be numbered 10-1205, R.C.M. 1947, which reads as follows:

10-1205. **Number and gender.** The singular includes the plural, the plural includes the singular, and the masculine includes the feminine unless the context indicates otherwise.

Section 6. There is a new section to be numbered 10-1206, R.C.M. 1947, which reads as follows:

10-1206. **Jurisdiction of the court.** (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, or concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.

(2) Justice, municipal and police courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth except that the following alleged violations are under the exclusive jurisdiction of the court:

(a) driving while intoxicated as defined in section 32-2142, R.C.M. 1947;

(b) failing to stop at an accident as defined in section 32-1202, R.C.M. 1947; and

(c) driving without a valid license or permit as defined in sections 31-125 and 31-127, R.C.M. 1947, after having been previously convicted of the same offense.

Section 7. There is a new section to be numbered 10-1207, R.C.M. 1947, which reads as follows:

10-1207. **Venue and transfer.** (1) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, and the youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law;

(c) the county of residence of the youth's parents or guardian.

(2) A change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial and speedy hearing and final disposition of the case.

(3) In the case of a youth sixteen (16) years of age or older who is accused of one of the serious offenses listed in section 10-1229, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court the charge shall be filed and trial held in the district court of the county where the offense occurred.

Section 8. There is a new section to be numbered 10-1208, R.C.M. 1947, which reads as follows:

10-1208. **Retention of jurisdiction.** Once a court obtains jurisdiction over a youth the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the state department of institutions;

(3) in any event, at the time the youth reaches the age of twenty-one (21) years.

Section 9. There is a new section to be numbered 10-1209, R.C.M. 1947, which reads as follows:

10-1209. **Intake procedure.** (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act and the Constitutions of the State of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or custody, whether such detention or custody should be continued.

Once relevant information is secured, the probation officer shall:

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in custody or detention must be filed within five (5) working days from the date the youth was first confined or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

Section 10. There is a new section to be numbered 10-1210, R.C.M. 1947, which reads as follows:

10-1210. **Consent adjustment without petition.** (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge shall be required where the

complaint alleges commission of a felony or where the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) Probation;

(b) Placement of the youth in a licensed foster home or other home approved by the court;

(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;

(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a detention facility as defined by this act and such commitment shall not exceed a period of six (6) months without a subsequent order of the court, after notice and hearing.

Section 11. There is a new section to be numbered 10-1211, R.C.M. 1947, which reads as follows:

10-1211. **Taking into custody.** (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

Section 12. There is a new section to be numbered 10-1212, R.C.M. 1947, which reads as follows:

10-1212. **Detention of youth.** A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court;

he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act.

Section 13. There is a new section to be numbered 10-1213, R.C.M. 1947, which reads as follows:

10-1213. **Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.

(3) Whenever any peace officer has apprehended a youth, he shall immediately notify the probation officer of such fact and shall, as soon as practicable, provide the probation officer with a written report of his reasons for the apprehension.

Section 14. There is a new section to be numbered 10-1214, R.C.M. 1947, which reads as follows:

10-1214. **Place of detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be detained only in:

(a) a licensed foster home or a home approved by the court;

(b) a facility operated by a licensed child welfare agency;

(c) a district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court; or

(d) a detention facility;

(e) any other suitable place or facility, designated or operated by the court. The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection (c) or (d) is not available; the detention is in an area separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; the facilities specified in subsection (a) or (b) are not sufficient; and the court so orders.

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(3) A youth alleged to be in need of care shall be placed only in the facilities stated in subsections (a) and (b) of subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law.

Section 15. There is a new section to be numbered 10-1215, R.C.M. 1947, which reads as follows:

10-1215. **Petition — form and content.** A petition initiating proceedings under this act shall be signed by the county attorney and shall be entitled, "In the Matter of....., a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in custody, and if so, the place of detention or care and the time he was taken into custody;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

Section 16. There is a new section to be numbered 10-1216, R.C.M. 1947, which reads as follows:

10-1216. **Summons.** (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.

(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Court Act and shall have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention criteria and post-detention proceedings.

(5) If any youth is in custody or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such custody and the form the custody should take.

Section 17. There is a new section to be numbered 10-1217, R.C.M. 1947, which reads as follows:

10-1217. **Service of summons.** (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least five (5) days before the time stated for appearance.

(2) Service of summons on all other persons designated in subsection (1) of section 10-1216 shall be made in accordance with Rule 4(D) of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least five (5) days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding under this act, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements in this act by the parent or parents. A return endorsed upon the summons showing inability to serve summons in compliance with section 18(2) of this act constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

Section 18. There is a new section to be numbered 10-1218, R.C.M. 1947, which reads as follows:

10-1218. **Basic legal rights.** (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) the youth shall be immediately and effectively advised of his constitutional rights and his rights under this Act;

(b) the youth may waive such rights under the following situations:

(i) when the youth is under the age of twelve (12) years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of twelve (12) years, and the youth and his parents agree, they may make an effective waiver; and

(iii) when the youth is over the age of twelve (12) years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95, R.C.M. 1947, shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) No youth shall be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge.

(b) No fingerprint records or photographs shall be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(c) At such time as the proceedings in the matter including appeals, are complete, the fingerprint records and photographs shall be destroyed; except that such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision as set forth in subsection (1) of this section, the youth, parents and guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a detention facility or a youth forest camp or to the department of institutions for a period of more than six (6) months may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to: the opportunity to introduce evidence and otherwise be heard on the party's own behalf; confront and cross-examine witnesses testifying against the party; and admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in the Youth Court Act or other law.

(7) All post trial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure shall be available to a youth proceeded against under this act.

Section 19. There is a new section to be numbered 10-1219, R.C.M. 1947, which reads as follows:

10-1219. **Time limitations on petition hearing.** Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within fifteen (15) days after all service is completed. Delays resulting from service of process, or delays resulting from legal actions taken in behalf of the youth, shall not be included in the fifteen (15) day time limitation.

Section 20. There is a new section to be numbered 10-1220, R.C.M. 1947, which reads as follows:

10-1220. **Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses; in the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearings shall be set forthwith and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses; if the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court deems appropriate.

(4) The youth charged in a petition must be present at the hearing and if brought from detention to the hearing, shall not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons admitted as have a direct interest in the case; except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, shall not be excluded from the hearing.

(6) If the court finds on the basis of a valid admission by a youth of the allegations of the petition or if a youth is found to be a delinquent youth or a youth in need of supervision the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3.

Section 21. There is a new section to be numbered 10-1221, R.C.M. 1947, which reads as follows:

10-1221. **Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in section 10-1220, subsections (3), (4), and (5). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

Section 22. There is a new section to be numbered 10-1222, R.C.M. 1947, which reads as follows:

10-1222. **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including, but not limited to, a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a detention facility and such custody shall not continue for a period of more than six (6) months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody the court may, with the consent of the youth in the manner provided in section 10-1218(1), R.C.M. 1947, for consent by a youth to waiver of his constitutional rights, or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the youth detention facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed forty-five (45) days for the purpose

of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b) above.

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of ...., ss:

In the district court for the .... judicial district.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, address and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....

The names and address of their nearest relatives are:

.....

Witness my hand this .... day of .... A.D. 19...

.....Judge

Section 23. There is a new section to be numbered 10-1223, R.C.M. 1947, which reads as follows:

10-1223. **Disqualification of judges.** The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this act.

Section 24. There is a new section to be numbered 10-1224, R.C.M. 1947, which reads as follows:

10-1224. **Consent decree with petition.** (1) At any time after the filing of a petition alleging delinquency or need of supervision, and before the entry of a judgment, the court may, on motion of counsel for the youth, or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree." The procedures used and dispositions permitted when this section shall conform to the procedure and disposition specified in section 10-1210, R.C.M. 1947, relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case.

(3) If, either prior to discharge by probation services, or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition shall not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of six (6) months, the probation officer shall submit a report at the end of each six (6) month period which shall be reviewed by the court.

Section 25. There is a new section to be numbered 10-1225, R.C.M. 1947, which reads as follows:

10-1225. **Appeals.** (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this act if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to, or withholds it from, one (1) or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

Section 26. There is a new section to be numbered 10-1226, R.C.M. 1947, which reads as follows:

10-1226. **Court costs and expenses.** The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

Section 27. There is a new section to be numbered 10-1227, R.C.M. 1947, which reads as follows:

10-1227. **Use of private agencies by public agency.** When the legal custody of a youth is vested in a public agency under the provisions of this act the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary but not less often than once each six (6) months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

Section 28. There is a new section to be numbered 10-1228, R.C.M. 1947, which reads as follows:

10-1228. **Probation revocation — disposition.** A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation." Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations. The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

Section 29. There is a new section to be numbered 10-1229, R.C.M. 1947, which reads as follows:

10-1229. **Transfer to criminal court.** (1) After a petition has been filed alleging delinquency the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was sixteen (16) years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in section 94-5-101, R.C.M. 1947;

(ii) arson as defined in section 94-6-104, R.C.M. 1947;

(iii) aggravated assault as defined in section 94-5-202, R.C.M. 1947;

(iv) robbery as defined in section 94-5-401, R.C.M. 1947;

(v) burglary or aggravated burglary as defined in section 94-6-204, R.C.M. 1947;

(vi) sexual intercourse without consent as defined in section 94-5-503, R.C.M. 1947;

(vii) aggravated kidnapping as defined in section 94-5-303, R.C.M. 1947;

(viii) possession of explosives as defined in section 94-6-105, R.C.M. 1947;

(ix) criminal sale of dangerous drugs for profit as included in section 54-132, R.C.M. 1947.

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury; and

(c) notice in writing of the time, place and purpose of the hearing is given to the youth, his counsel, and his parents, guardian or custodian at least ten (10) days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged; and

(ii) the seriousness of the offense and the protection of the community requires treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (2)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it deems proper.

Section 30. There is a new section to be numbered 10-1230, R.C.M. 1947, which reads as follows:

10-1230. **Law enforcement records.** (1) All law enforcement records concerning a youth, except traffic records, shall not be open to public inspection nor their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) Montana law enforcement officers when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense for the purpose of a presentence;

(f) the county attorney; or

(g) the youth, his parent, guardian or counsel.

Section 31. There is a new section to be numbered 10-1231, R.C.M. 1947, which reads as follows:

10-1231. **Youth court records.** (1) Youth court records, including social, medical and psychological records, reports of preliminary inquiries, predispositional studies and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff, or the attorney for a convicted party, who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this act, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions and other papers filed in a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection by those persons and agencies listed in subsection (1) of this section, and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless otherwise ordered by the judge.

Section 32. There is a new section to be numbered 10-1232, R.C.M. 1947, which reads as follows:

10-1232. **Disposition of records.** (1) All court findings, orders, judgments and the legal and social files and records of the court, probation services and law enforcement agencies pertaining to a youth coming under this act shall be physically sealed when the youth reaches the age of eighteen (18) years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's eighteenth birthday the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Youth court records, probation officer's records, and all other reports of social and clinical studies shall not be opened to inspection except by consent of the court or the youth, upon petition to the youth court.

(4) Upon the physical sealing of the records pertaining to a youth pursuant to this section any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(5) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after ten (10) years from the date of sealing.

(6) This section shall not apply to youth traffic records.

Section 33. There is a new section to be numbered 10-1233, R.C.M. 1947, which reads as follows:

10-1233. **Youth court judge.** (1) Each judicial district in the state shall have at least one (1) judge of the youth court. His duties shall be:

(a) to appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) to conduct hearings on youth court proceedings under this act;

(c) to perform any other functions consistent with the legislative purpose of this act.

(2) In each multi-judge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

If the judges in any multi-judge judicial district do not establish such court rule within sixty (60) days of the enactment of the Montana Youth Court Act, the Montana supreme court shall establish an appropriate rule for such judicial district.

Section 34. There is a new section to be numbered 10-1234, R.C.M. 1947, which reads as follows:

10-1234. **Probation officers — powers — duties — qualifications.** (1) The youth division judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and

intent of this act. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers shall approximate those required for probation officers insofar as possible. A chief probation officer shall be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this act. No person while serving as a law enforcement officer shall be appointed or perform the duties of a full-time or part-time probation officer.

(2) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences or;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences, and at least one (1) year's experience in work of a nature related to the duties of a probation officer as set forth in subsection (4) of this section; or

(c) a bachelor's degree in any field and at least three (3) years' experience in work related to the duties of a probation officer as set forth in subsection (4) of this section.

(d) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer; provided, preference shall be given to persons with the qualifications set forth in subsection (2) above.

(4) A probation officer shall:

(a) perform the duties set out in section 10-1210;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(5) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

(6) A chief probation officer shall receive for his services a sum specified by the court upon appointment; however, the judge may employ him on a yearly salary, not to exceed eleven thousand dollars ($11,000) or on a per diem basis at the rate of forty dollars ($40) per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one (1) county whereby such county shall pay the entire salary.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety percent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed for actual expenses incurred.

Section 35. There is a new section to be numbered 10-1235, R.C.M. 1947, which reads as follows:

10-1235. **Order of adjudication — non-criminal.** No commitment of any youth to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this act. Neither the disposition of a youth under this act, nor evidence given in youth court proceedings under this act, shall be admissible in evidence except as otherwise provided in this act.

Section 36. There is a new section to be numbered 10-1236, R.C.M. 1947, which reads as follows:

10-1236. **Foster homes.** (1) The youth court may establish procedures for finding, maintaining and administering temporary and permanent licensed foster homes or other homes approved by the court for youth within the provisions of this act.

(2) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law.

(3) All foster homes licensed by the social and rehabilitation services, established shall be financed by the department of social and rehabilitation services as set forth in section 71-210(b), R.C.M. 1947.

Section 37. Section 10-627, R.C.M. 1947, is renumbered 10-1237, and is amended to read as follows:

"*10-1237.* **Youth detention home.** In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth *detention* home, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent *youths and youth in need of supervision* may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint *such personnel as required,* who shall have charge of said home and of the *youths* detained therein.

Such home shall be furnished in a comfortable manner, as nearly as may be as a family home. The compensation of such *personnel* shall be fixed by the court, and such compensation and the maintaining of such home shall be paid out of the county treasury."

Section 38. Section 10-615, R.C.M. 1947, is renumbered 10-1238, and is amended to read as follows:

"*10-1238.* **Support of youth committed to a custodial agency.** When a *youth under this act* is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of such *youth,* compensation for the care of such *youth,* when approved by order of the court, shall be a charge upon the county, or the appropriate division thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct, such sum as will cover, in whole or in part, the support of such *youth, provided, however that such sum shall not exceed the cost of reasonable care of a normal youth at home,* and if such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or said cost may be collected in a civil action against the parent or parents."

Section 39. Section 10-631, R.C.M. 1947, is renumbered 10-1239.

Section 40. Section 10-628, R.C.M. 1947, is renumbered 10-1240, and is amended to read as follows:

"*10-1240.* **Youth court committee.** In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, *including youth representatives,* which committee shall be designated as a *youth* court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the *youth* department of the court, *including the appointment of probation officers,* and shall act as a supervisory committee of *youth* detention homes."

Section 41. There is a new section to be numbered 10-1241, R.C.M. 1947, which reads as follows:

10-1241. **Publicity.** No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be a delinquent youth or youth in need of supervision except as provided in section 10-1220(5), R.C.M. 1947.

Section 42. Section 10-1101, R.C.M. 1947, is renumbered 10-1242, and is amended to read as follows:

"*10-1242.* **Establishment of district youth guidance home program.** The legislative assembly, in recognition of the wide and varied needs of *delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by this act a district youth guid-*

ance home program to provide facilities and services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

Section 43. Section 10-1102, R.C.M. 1947, is renumbered 10-1243, and is amended to read as follows:

"*10-1243.* **Definitions.** *For purposes of this act:*

(a) *Delinquent youth. A youth as defined in section 10-1203(12).*

(b) A youth in need of supervision. A youth as defined in section 10-1203(13).

(c) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state institutions, the function of which is to provide a home and guidance through adult supervision for *delinquent youths and youths in need of supervision.*"

Section 44. Section 10-1103, R.C.M. 1947, is renumbered 10-1244.

Section 45. Section 10-1104, R.C.M. 1947, is renumbered 10-1245, and is amended to read as follows:

"*10-1245.* **Governmental aid to nonprofit organizations.** (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations, to provide facilities and services for *delinquent youths and youths in need of supervision* in district youth guidance homes, and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to provide funds, materials, facilities and services for district youth guidance homes."

Section 46. Section 10-1105, R.C.M. 1947, is renumbered 10-1246, and is amended to read as follows:

"*10-1246.* **Authority of youth court judge to commit delinquent youths and youths in need of supervision.** A *youth court* judge is hereby authorized in his discretion to place a *delinquent youth or a youth in need of supervision* to said district youth guidance home for any period of time up to the child's twenty-first birthday subject to the approval of its sponsoring nonprofit corporation or association."

Section 47. Section 10-1106, R.C.M. 1947, is renumbered 10-1247, and is amended to read as follows:

"*10-1247.* **Petition by person under twenty-one (21) to be placed in district youth guidance home.** *Any person under the age of eighteen (18) years, or any person between the ages of eighteen (18) and twenty-one (21) years, who is still within the jurisdiction of the youth court* may petition the *youth* court of a district in which a district youth guidance home has been established to be placed *in* a district youth guidance home for any period of time up to said person's twenty-first birthday."

Section 48. Section 10-1107, R.C.M. 1947, is renumbered 10-1248, and is amended to read as follows:

"*10-1248.* **Continuing jurisdiction of youth court over youths.** The *youth* court placing a *delinquent youth or a youth in need of supervision* to a district youth guidance home shall retain continuing jurisdiction over said *youth* until said *youth* becomes twenty-one (21) years of age or is otherwise discharged by order of the court."

Section 49. Section 10-1108, R.C.M. 1947, is renumbered 10-1249, and is amended to read as follows:

"*10-1249.* **Per diem charge to financially able parents.** A *youth court* judge placing a *delinquent youth or a youth in need of supervision in* a district youth guidance home may, if the parent or parents of the *youth* are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a per diem charge not to exceed the per diem charge established by the department of institutions for each *youth* placed *in* the Montana children's center."

Section 50. Section 10-1109, R.C.M. 1947, is renumbered 10-1250, and is amended to read as follows:

"*10-1250.* **Placement of youths by department of institutions.** The department of institutions is hereby authorized as part of its aftercare program to place a delinquent *youth or a youth in need of supervision* in a district youth guidance home subject to the approval of its sponsoring nonprofit corporation or association."

Section 51. Section 10-1110, R.C.M. 1947, is renumbered 10-1251.

Section 52. Section 10-1111, R.C.M. 1947, is renumbered 10-1252.

Section 53. Section 94-2-109, R.C.M. 1947, is amended to read as follows:

"94-2-109. **Responsibility.** A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense."

Section 54. Sections 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630 and 10-633 are repealed.

Approved March 28, 1974

CHAPTER NO. 330

AN ACT TO AMEND SECTION 84-1840, R.C.M. 1947, PROVIDING FOR